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INCLUSIONARY HOUSING AND LINKAGE PROGRAMS IN METROPOLITAN BOSTON



METROPOLITAN AREA PLANNING COUNCIL



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METROPOLITAN AREA PLANNING COUNCIL
May 1986

Acknowledgements

The Metropolitan Area Planning Council is the designated regional planning agency for the 101 cities and towns of metropolitan Boston. The Council helps its member communities plan in the areas of housing, land use, environmental quality, solid waste, hazardous materials, air quality, economic development, and transportation.

Credits

Principal Author: Carol Baldassari
Contributing Author: Don Borchelt
Technical Review: Alexander Zaleski
Joel Bard, Esq.
Douglas Carnahan, PhD.
Glenn Garber
Copy Editor: Joan Lautman
Graphics: Cindy Harris
Fred Popper
Photography: David Weaver
Len Gittleman
Production: Anna Maria Fantasia

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William C. Sawyer, Esq., President
Frank E. Baxter, Vice President
Marjorie A. Davis, Secretary
Franklin G. Ching, PhD., Treasurer
Martha Gjestebey, Asst. Treasurer

Alexander V. Zaleski, AICP
Executive Director

For help in preparing this report, we are indebted to representatives from each community whose program we have reviewed -- planning personnel, housing authority staff, legal experts, developers and marketers -- who have generously shared their time, and been candid in their analyses of their programs, in the hope that other MAPC member communities could profit from an evaluation of their pioneering efforts.

Our special thanks go to Robert Bowyer of the Lexington Planning Department, John Quatrali of Newton's Department of Planning and Development, and Michael Leon, Esq. of Warner and Stackpole.

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Executive Summary

State and local governments today are wrestling with a difficult problem: how to provide an ample supply of housing affordable to a diversity of household types and income levels in the face of the wholesale elimination of federal subsidies for the construction of low- and moderate-income housing. Some municipalities in the MAPC region have developed strategies which use a combination of local incentives and state housing subsidies to encourage private developers to contribute to the production of more affordable housing.

This report describes four initiatives in the MAPC region -- Newton's Incentive Zoning Ordinance, Lexington's Inclusionary Housing Policy, Reading's Inclusionary Housing Program, and Boston's Linkage Regulations. Our purpose is to provide programmatic and managerial information to communities who are seeking alternative housing strategies or who are already considering the use of incentive zoning programs to promote the construction of affordable housing.

The inclusionary housing programs reviewed in this report require residential developers, seeking special permits for density increases or rezoning to allow for multi-family developments, to set aside a minimum number or a percentage of the units within their developments for households at a specific lower income level. In some instances, the required units may be located elsewhere in the municipality, or a developer can provide a cash contribution in lieu of the units. The local ordinance which establishes program requirements will often state how the affordable units will be managed and protected as affordable over a certain period of time.

Linkage programs require developers of large-scale office, retail, institutional, and/or hotel or motel facilities, usually needing some form of zoning relief, to pay an impact fee to the municipality. The fee is to be used for the creation or rehabilitation of lower-income housing. In some cases, developers can opt to construct housing units directly. The local ordinance which regulates the program often establishes what size or type of developments must pay the impact fee, sets that fee, and determines the payment period.

Inclusionary housing and linkage programs are important tools available to local communities concerned about the lack of affordable housing. Alone, these approaches will not solve the problem, but as part of a comprehensive strategy they can make an important contribution.

Chapter 1: Local Programs

The first part of this report outlines in detail four local programs:

- Lexington's Inclusionary Housing Policy,
- Newton's 10% Ordinance,
- Reading's Inclusionary Housing Program, and
- Boston's Linkage Regulations.

Other communities in the region have recently adopted or proposed linkage or inclusionary housing programs, but these programs have not been in existence long enough to have produced new housing units or to have collected impact payments. These programs are mentioned only briefly in this report.

Chapter 2: Legal Issues of Inclusionary Housing

Inclusionary housing and linkage programs give rise to two legal issues:

- Does the municipality have the statutory authority to adopt the programs, and
- Are the techniques constitutional?

In Massachusetts, all local communities except the City of Boston are granted the statutory authority to adopt zoning by the Zoning Act, Massachusetts General Laws, Chapter 40A. The preamble to the Zoning Act includes in its statement of purpose "to encourage housing for persons of all income levels." Section 9 of the Act specifically provides that the provision of low- and moderate-income housing can be required as a condition of a special permit. Critical elements of an ordinance based on Section 9 are discussed in the report. In addition, this section of the report addresses the legal issues raised by linkage programs.

A community can reduce the risk of a successful legal challenge to its program if it properly drafts and adopts an inclusionary housing or linkage ordinance which meets the three constitutional tests applied to zoning and land-use techniques. These tests are:

- Taking without compensation,
- Due process, and
- Equal protection.

This section of the report suggests ways to meet those tests.

Chapter 3: The Implementation of Inclusionary Housing Programs

The third section of the report examines critical issues related to implementing an inclusionary housing program in terms of the Newton and Lexington experience. Findings suggest that:

- A community must determine what its local/regional housing needs are and target the program to provide for those households.
- A community must decide whether to require that developers locate the new affordable units on the site of the new developments, or allow developers other options; off-site locations, or cash in lieu of units.
- A community must decide what incentives it is willing to offer, or what resources it can make available to developers to encourage their participation in the program. The community must weigh how much incentive must be offered to ensure the production of an adequate number of units for the targeted households against the costs of such incentives to the community.
- A community must create a process to ensure that developers comply with the program's requirements once permits have been approved and incentives given.
- A community must also meet its obligations to the developer participating in the program. The report details what communities need to provide developers to ensure the developments success.

Chapter 4: The Management and Maintenance of Affordable Housing

In this section of the report issues relating to the management and maintenance of the affordable units created through the use of the inclusionary housing programs are addressed. In terms of Lexington's and Newton's experiences:

- If a community establishes an inclusionary housing program which results in the production of affordable units, the community must plan how these units will be managed and maintained.
- If a community adopts a linkage program, or accepts developers' cash contributions in lieu of affordable units, the community must create a housing trust or other similar entity to ensure that contributions are used effectively for the sole purpose of creating affordable housing.
- Communities, in planning inclusionary housing programs, must create the means for ensuring that new units remain affordable over time.

Chapter 5: The Economics of Inclusionary Housing

If a financially feasible development is not possible under a local program, developers will not participate. The considerations important to assuring economic feasibility of inclusionary developments are:

- The number and type of inclusionary units required of the developer;
- The level of density bonus or other incentives to be provided to the developer; and
- The portion of the cost of the inclusionary units to be borne by public resources, and the portion to be absorbed by the private parties involved in the development itself.

In many inclusionary housing developments, a portion of the cost of the inclusionary units, or the project as a whole, is supported by some form of federal or state public subsidy, in order to maximize the number of units which could be required. The available programs include:

- Chapter 667/705 State-Aided Elderly and Family Housing,
- Section 8 Existing Housing Program,
- Chapter 707 Housing Program,
- The Community Development Block Grant Program (CDBG), and
- The MHP Homeownership Opportunity Program.

Conclusion

A number of steps are discussed should municipalities decide to promote the use of inclusionary housing and linkage programs in their communities.

- Identify a local committee or board to coordinate the local housing effort.
- Evaluate local housing needs and conditions.
- Prepare proposals for inclusionary housing or linkage programs.
- Investigate available funding sources.
- Organize a local housing partnership.

Inclusionary housing and linkage programs are not going to solve the lack of affordable housing. However, as part of a comprehensive effort, these programs may bring the region closer to the goal of an adequate mix of housing for all of its residents.



Introduction

Most communities in the MAPC region are experiencing a housing crisis affecting an ever-growing number of residents. For low-income households, long familiar with the difficulty of finding adequate housing at reasonable prices, the problem is now insurmountable. Prices of both new and existing homes have climbed completely beyond their reach. Affordable rental units are fast disappearing as rents escalate and more units are converted to condominiums.

Now, the grip of the housing crisis has extended beyond low-income households to include moderate- and middle-income residents as well. Young families, first-time home buyers, single parents with children, elderly residents, local municipal workers, and skilled professionals relocating to this region -- all are severely affected by the current crisis.

Communities seeking to provide housing opportunities for a diversity of households types and income levels, or those under state pressure to do so, find that federal funds for the construction of subsidized housing, the principal focus of affordable housing efforts for the past three decades, have been eliminated. Neither state nor local governments have the revenues to replace completely these lost federal funds. Without the assurance of the federal subsidies, and while witnessing an increasing need for new affordable units, some communities in this region and across the nation have developed strategies which combine local land-use incentives and state housing programs with the private development industry's contributions¹ to promote more affordable housing opportunities.

1. See Alan Mallach's book, Inclusionary Housing Programs: Policies and Practices, for a full description of programs across the nation.

The purpose of this report is to provide a practical handbook for communities considering the use of either inclusionary housing programs or linkage exactions to promote the construction of affordable housing within their own communities.

Inclusionary Housing Programs

Inclusionary housing programs represent a significant change in zoning and land-use practices in two important ways:

- Instead of relying solely on state and federal subsidies for the production of low- and moderate-income housing, inclusionary housing programs rely on local land-use incentives to encourage the private housing and development industry to carry at least part of the cost of affordable housing.
- Most programs foster the construction of new residential developments which are socio-economically integrated. This policy is in sharp contrast to past public housing efforts which generally created dense, single site, low-income housing projects, often isolated from other residential development in the community.

The fundamental feature of inclusionary housing programs is the joint participation between the local community government (be it planning department, board of aldermen, town meeting members, or housing authority) and the private development industry to create low and/or moderate income housing as part of other development taking place in the community.

While legislative and judicial mandates in California and New Jersey respectively have either encouraged or required developers' participation, local inclusionary housing programs reviewed in this report have been initiated with the voluntary participation of developers. Municipalities require the contribution of inclusionary units only from those residential developers who seek special permits to increase the allowed density for their development or a rezoning of their land to allow multi-family development. Technically, these voluntary programs are "incentive" programs, (hence Newton uses the term "incentive zoning" to describe its program). However, in this report, the more generic term "inclusionary" housing program will be used to emphasize that usually all the local programs reviewed require developers to include the lower-income units within their new residential developments.

In most cases, the key to the inclusionary housing program is a municipal zoning ordinance which requires that a minimum number or percentage of units be made available to households at a specified income level.²

2. Throughout this report, the terms "ordinance" and "bylaw" will be used interchangeably, unless the context requires one or the other.

Within that basic framework, communities have developed a number of options. Communities most often require that the inclusionary units be located on the site of the development, but may allow units to be developed off-site. In some cases, a cash payment given in lieu of actual units may be substituted. The ordinance will often state how the created units will be managed and protected as affordable over a certain period of time.

The design of the inclusionary housing programs reviewed in this report have depended largely on the communities in which they are located, and take into account the communities' economic climate, land values, resources, the requirement for affordable housing and the needs of those targeted to benefit from the program. In some communities, developers have initiated an inclusionary housing program as a means to promote development in the face of strong local pressure against conventional multi-family development. In other areas, local governments have initiated the zoning amendments which offer density bonuses or other incentives to encourage developers' participation.

Linkage Programs

Historically, inclusionary housing programs have been located in suburban areas. Recently, cities such as San Francisco, Seattle, New York, Hartford, and Boston have adapted aspects of these suburban inclusionary housing programs to create new linkage programs.

- Linkage regulations exact payments from downtown office and commercial developers in order to support a neighborhood or community housing trust, the money from which must be used to construct and/or preserve housing in the cities' neighborhoods.
- A city's linkage regulations will establish what size and type of development is obligated to pay the impact fee, set the size of the fee, and determine the payment period.

Inherent in the creation of these linkage programs is the acknowledgement of the relationship between downtown redevelopment, the resultant influx of new white collar workers, the potential displacement of existing, lower-income residents, and the pressure these changes create on affordable housing stock within the neighborhoods.

Both linkage and inclusionary housing programs provide a means to establish a private/public partnership to address the housing shortage at a critical time when subsidies for low- and moderate-income housing construction have been drastically reduced and the need for affordable housing in cities and suburbs has greatly increased. These programs alone are no cure for the housing crisis; they are among the more important tools which communities can use, in conjunction with other approaches, to meet local housing needs.



Chapter 1

Local Programs

To illustrate how each community has adapted the concept of inclusionary zoning or linkage requirements to meet its own affordable housing needs, this section of the report will outline the components of Lexington's Inclusionary Housing Policy, Newton's 10% Ordinance, Reading's Inclusionary Housing Program, and Boston's Linkage Regulations. Other communities in the MAPC region may use this outline to compare the intentions of the existing programs and consider what aspects are most appropriate for their local situations, should their municipality decide to adopt an inclusionary housing program to help meet their need for affordable housing.

For each community's program, the following issues will be summarized:

- Program requirements,
- Incentives for developers,
- Location of units,
- Quality and character of units,
- Who benefits,
- Management,
- Preservation of affordability,
- Outcome.

Lexington

Lexington uses an inclusionary housing policy whereby developers, seeking a rezoning from the Town Meeting to allow multi-family use, are required to create housing units for low- and moderate-income families in order to obtain a "favorable recommendation from the planning board for an increase in density."³ These units may be located either within the proposed residential development or elsewhere in town. Under the first version of the policy (1979), the Lexington Planning Board required that 10% of the units in a proposed development be set aside for low-income housing in return for an increase in density. In 1980, the Board increased the percent of inclusionary units to 20%. No units were obtained under this 20% requirement, however. In 1985, Lexington adopted a more diverse and flexible policy. The revision was the result of both economic and political pragmatism:

- Federal subsidies for the construction of lower-income housing was diminishing,
- A program which relied on private resources to create mixed-income housing had to provide potential participating developers a variety of ways to meet the inclusionary requirement to be economically feasible in Lexington's housing market, and
- Because the program relied on a two-thirds majority vote at town meeting to provide the rezoning or density increase, the program had to include housing options for moderate and middle income residents to gain local approval for any new mixed-income residential development.

Requirements

At present, the Lexington Inclusionary Housing Policy requires, as a condition for granting an increase in density greater than that allowed by right, that:

- 5% of the units in the development be donated by the housing developer to the Lexington Housing Authority for low-income tenancy, or
- 15% of the units in the development be offered to the Lexington Housing Authority for purchase at levels established by the housing subsidy programs, or

3. See Appendix for a copy of the Lexington Housing Policy.

4. There are currently two potential state funding sources, Ch.705, and Ch.667.

- 25% of the units in the development be set aside as moderate-income units to be purchased or rented by eligible households, or
- 40% of the units in the development be set aside as middle-income units to be purchased by eligible households.

A selected percentage of the units in the development may be located off site. If the developer is unable to meet the requirements above, the developer may elect to make a financial contribution to the Lexington Housing Authority (LHA) or the Lexington Housing Assistance Board (LexHAB) in lieu of providing the units. The cash contribution must be equal to 3% of the sales price of all the units in the development.

Incentives for Developers

Developers receive the Planning Board's support for their Town Meeting warrant article to rezone the land to allow for an increase in density, only if they comply with the Inclusionary Housing Policy.⁵ However, developers still must present their residential development proposal to the Town Meeting and receive a favorable 2/3 majority vote in order to secure the necessary rezoning. The same concept has been applied to the sale of municipal properties, such as surplus schools. Developers are given the opportunity to purchase the property at a reduced cost when they donate some of the units to the Town, or sell some or all of the units as affordable, limited-equity condominiums. Additional incentives the Town is studying include:

- Accelerated processing of applications,
- Flexibility in site planning,
- Additional density bonuses,
- Use of vacant town-owned land,
- Sharing costs of public improvements, and
- Assistance in obtaining state and federal funding.

5. Lexington states that "Where an action of the Town increases the value of a residential property, by permitting higher density for instance, or reduces an owner's or developer's expenses, by granting a waiver or variance from normal standards for instance, the Town should receive a benefit, such as some type of affordable housing in return. Further, the Town should refrain from actions which increase value, or reduce expenses unless it does receive such a benefit." (Lexington Inclusionary Housing Policy, 3/18/85.)

Location of Units

In most cases, dwelling units are required to be located on site, and to be dispersed within the proposed development. However, if this option is not possible, developers may elect to locate a selected percent of the units elsewhere in Town if they are newly created units, or if they are located within existing structures and there will be a net increase in the number of units within that structure once it has been rehabilitated.

Quality and Character of Units

The units provided by the developer must be "compatible with and nearly indistinguishable from the market-rate units in terms of exterior appearances."⁶ The policy acknowledges that the units may be smaller than the market-rate units, or have fewer amenities as a cost-saving measure.

Who Benefits

Lexington's current target populations are families in any of four specific income categories, as defined in the table below:

LEXINGTON HOUSING POLICY TARGET GROUPS

Income Group	Definition	Income range FY 1986 (Four-person family)
Very Low Income	Below 50% of SMSA Median	Below \$17,000
Low Income	50% - 80% of SMSA Median	\$17,000 - \$27,200
Moderate Income	80% -120% of SMSA Median	\$27,200 - \$40,800
Middle Income	120% -150% of SMSA Median	\$40,800 - \$51,000

As a Town policy, the Planning Department prefers the construction of rental units for these family households, but it is the developer who proposes the percentage of units to be constructed, the populations to be served, and whether units will be made available for rent or purchase.

6. Lexington Inclusionary Housing Policy, 3/18/85.

Management

The Lexington Housing Authority owns and manages all of the lower-income rental units which are donated to or purchased by the Town through the Inclusionary Housing Policy. If funds for purchase are not available, the developers may continue to own and manage the affordable rental units within their developments. Developers may either select tenants from a list of eligible families, or may generate their own tenant list which must be verified before the units can be occupied.

A newly created entity, the Lexington Housing Assistance Board (LexHAB), currently staffed by a volunteer board, was set up in Lexington with an increasingly important role as the Inclusionary Housing Program in Lexington continues to grow and develop. LexHAB will be responsible for:

- Monitoring the sale and resale of limited-equity units,
- Verifying income eligibility of the applicants for these units,
- Verifying the incomes of potential moderate- and middle-income tenants of rental units targeted to those income categories.

It is anticipated that LexHAB will also be the recipient of cash donations from developers who select that option in lieu of providing actual units. The goal of LexHAB is to use this financial source as well as others to develop new affordable housing in Lexington.

Preservation of Affordability

Through controls,⁷ either on rental levels, or resale values, Lexington plans to keep the housing units affordable for an indefinite period of time. Both ongoing rental and resale levels are determined, primarily, by the ability of target-income groups to rent or purchase the unit and are only secondarily related to inflation. Resale prices on one converted school were determined by the original acquisition price plus an annual allowance for appreciation of value equal to an increase in the Consumer Price Index for the Boston area or 4%, whichever was less. The Town is analyzing other methods for calculating the maximum annual increase in value which will be allowed on the units. These other indices include:

- The annual increase in the wage component of the Consumer Price Index for the Boston metropolitan area,
- The percentage increase in the median income for families in the Boston metropolitan area,

7. In the case of property previously owned by the Town, controls are registered in the deed. In rezoned parcels, controls have been established by the zoning document.

- The increase in the buyer's initial cash investment (not the resale value of the housing unit) in an alternative form of investment, such as a long term certificate of deposit.

Outcome

To date, 19 low-income rental units and 61 moderately-priced condominiums have been completed and occupied. 38 units -- 10 low-income rental units, and 28 moderate-income rental units -- are under construction. An additional 61 units -- 26 low-income rental units and 35 moderate-income rental units have been approved by Town Meeting vote.

Developers have promised or already contributed \$1,300,000.00 to the Lexington Housing Assistance Board (LexHAB) thus far. Some of this money has been used to purchase the low-income units noted above.

Newton

In the MAPC region, Newton is the community with the most experience with an inclusionary housing program, a program which in Newton is called the Incentive Zoning Program. The earliest uses of the inclusionary housing concept began on a case-by-case basis around 1968-69. In 1972, the Board of Aldermen passed a 10% Zoning Ordinance; it was subsequently revised in 1977. Today, further revisions to the Ordinance are being proposed. Each change has represented a further tightening and clarification of the requirements imposed on developers when they seek a special permit to increase the density for their residential development beyond that granted by right in the City's Zoning Ordinance.

The 1977 Ordinance is in effect and is discussed below. The proposed revisions are noted as well.

Requirements

Whenever a developer seeks to increase the density of a residential development, the Board of Aldermen requires:

- 10% of the total number of dwelling units be provided within the development for low-income family and/or elderly households, or
- A cash payment equivalent in value to the units which otherwise would have been provided within the development be made available for the creation of low-income family and/or elderly housing, or
- Provision of all or some of the required units on a site different from the development, or
- Provision of all or some of the required units through a combination of any of all of the methods listed above.

While developers can make proposals, the Board of Aldermen ultimately decides which option to apply to each development. The Aldermen have generally required that the units be offered to the City of Newton for purchase at a price consistent with limits established by the funding agency for the relevant state public housing programs. If the City cannot secure the public housing funds for purchase of the units, the developer is required instead to make them available for rent, through the

8. See Appendix for copies of Newton's 10% Ordinance, and the City's proposed revisions.

9. The current (1986) funding levels for the State Chapter 667 and 705 programs are: \$42,500. for a one-bedroom unit for elderly households, \$72,500. for a family unit.

Newton Housing Authority, to eligible Section 8 Certificate Holders for a period of 15 years.

Proposed requirements would place an emphasis on housing units located on-site, within the development.



Dolan Pond, Auburndale, (1981) includes one on-site family unit.

Incentives for Developers

In Newton, a developer receives a special permit from the Board of Alderman to increase the density of the proposed residential development for apartment houses, hotels, garden apartments, or attached dwellings to a level greater than that allowable as a matter of right. Based on the Newton Planning Department's recommendations regarding site and infrastructural capacity, the Board of Aldermen establishes what density bonus can be offered to the developer.

Location of Units

In both the 1977 Ordinance and the proposed revision, the Board of Aldermen determines the location of the units which the developer must provide the city.

If the developer is allowed to provide the required units off-site, he/she must either construct them, or purchase and rehabilitate them in the same ward as the development. The proposed revision places more emphasis on locating units on-site, requiring the developer to provide double the percent of units if they are located off-site. Also, the revision requires newly built units unless the developer can purchase and rehabilitate an existing unit which has been vacant for two years. On-site units must be dispersed throughout the development in locations selected by the Aldermen.

Quality and Character of Units

In both the present and proposed ordinances, the Board of Aldermen determines the units' sizes and occupancy characteristics - whether family or elderly households. Units created early in the history of the 10% Ordinance were not always equivalent to those units sold at the market rate. The quality depended upon the developer, and was somewhat downgraded, offering fewer amenities than the market-rate units.

While the existing amendment makes no mention of the quality and character requirements of on- or off-site units, the Newton Board's proposed revision is specific: units located off-site are required to have a fair-market value of the median assessed value of a single-family residence whether the unit is rehabilitated or newly built. Units located on-site must be equivalent in size, quality, and character to other units in the development.

Who Benefits

FEDERAL AND STATE GUIDELINES, EFFECTIVE JANUARY 1, 1986

<u>Family Size</u>	<u>Income Ceilings for Section 8 Certificates</u>	<u>Income Ceilings for Public Housing</u>
1	\$11,900.	\$14,476.
2	13,600.	16,544.
3	15,300.	18,612.
4	17,000.	20,680.
5	18,350.	21,972.
6	19,700.	23,265.
7	21,000.	24,557.
8	22,450.	25,850.

Low-income family and elderly households seeking to rent housing in Newton benefit from the program. While they need not be Newton residents, they must be Section 8 Certificate Holders who have applied to the Newton Housing Authority for rental housing, or must be eligible for public housing placement and be registered on the Newton Housing Authority's waiting list.¹⁰ Income levels are set by federal (in the case of Section 8 Certificate Holders) and state guidelines (public housing eligibility).

Management

The Newton Housing Authority manages and maintains units which the City of Newton acquires by purchase or donation from the developer. From their lists of families or elders eligible for public housing placements, the Housing Authority fills vacancies as they arise or when new units become available.

Developers, who retain ownership of rental units created through the special permit process, maintain and manage the designated inclusionary units. When inclusionary units are vacated and become available, the Newton Housing Authority notifies all eligible Section 8 Certificate Holders on their waiting list, but the developers/owners screen and select the tenants. They receive rent from the tenant as well as the state subsidy to maintain the unit and cover condominium association costs when the rental units are part of a condominium development.

Preservation of Affordability

At present, under the existing ordinance, if the City of Newton acquires the inclusionary units, the Newton Housing Authority manages and maintains them as it does any other type of public housing; however, in this case the units are owned by the Newton Community Development Authority, not by the Housing Authority. Thus, the affordable units created will be preserved for low-income tenants indefinitely. If the affordable units are to be leased, the developers, who retain ownership of the units, are required to make them available to eligible tenants for a period of 15 years.

If the revised ordinance is passed, the 15-year rental period would be extended to 40 years whether or not a rent subsidy program exists. If no subsidy exists, the developer will be required to lease the units to eligible tenants for not more than 30% of their gross incomes. The City of Newton would have the option to buy these units from the developer at the fair-market rate at the end of the 40-year period.

10. Section 8 refers to the federal program administered by HUD, in which rental subsidies are paid for housing which the eligible recipient locates him or herself. To qualify for public housing placement, a household must meet income guidelines, as well as have assets valued at no more than \$15,000. or an amount equivalent to no more than 1-1/2 times its income.

Outcome

As of April 1986, 46 rental units for low-income elderly households and 68 rental units with two or more bedrooms for low-income families are either in the planning and construction stages, or are already completed and occupied -- a total of 114 low-income rental units. In addition, another 66 low-income rental units -- 58 elderly and 8 family units -- have been provided by developers who converted two schools in Newton.

The City has received a \$20,000 cash donation in lieu of inclusionary units from the developer of one small parcel, and additional cash payments from other developers who also provided units.

Reading

In April 1985, Reading passed a new amendment to the zoning bylaws which allows townhouse development under a special permit process.¹¹ The bylaw was originally proposed by a developer who wanted to build a townhouse condominium development, but could not do so under the prevailing zoning bylaws. Under the amendment, if the Reading Housing Authority determines at the time of the proposal for a new townhouse development, that there is a shortage of low- and/or moderate-income housing or elderly housing in the town, the Board of Appeals shall impose a general condition to the issuance of that special permit which would require the developer to create affordable housing units. The new inclusionary bylaw has yet to be utilized, but the proposal put forth by the developer who initially suggested the inclusionary program may be the first.

Requirements

Reading requires that developers seeking approval for townhouse construction:

- Restrict up to 10% of the total townhouses within the development for low- and/or moderate-income housing or elderly housing, or
- Provide up to 10% of the total number of units in the development elsewhere in town, or
- Provide an alternative cash contribution to be used by the Reading Housing Authority to provide low- and/or moderate-income housing or elderly housing.

The Reading Housing Authority defines the required option and determines whether the units will be located on or off-site. Should the Housing Authority require the developer to make a cash contribution, the amount due is calculated according to the formula below:

$\$2,000 \times \text{Number of Units} \times (\text{CPI at time of application}/\text{CPI prior to 1/85})^{12}$

Incentives for Developers

Under the special permit process, the town allows developers to construct townhouses instead of single-family residences, and gives them an increase in density beyond that allowed by right. The Reading bylaw creates a firm density ceiling by allowing a developer to construct no more than 5 units per acre, and requires a minimum of 15 acres.

11. See Appendix for a copy of the Reading Zoning Amendment.

12. CPI = Consumer Price Index published by the United States Department of Labor.

Location of Units

At the time of the special permit petition, the Reading Housing Authority determines where the developer must locate the required units. The amendment makes no mention of the dispersal of the units if they are located on-site. Off-site units may be newly constructed or provided through the purchase of existing units. If the latter course is chosen, there is currently no provision requiring that the units be vacant.

Quality and Character of Units

The zoning bylaw amendment also leaves undefined how the units provided on-site will compare to the market-rate units in terms of quality and character. However, the amendment requires the developer to upgrade off-site units to conform with state building code regulations, and gives the Reading Housing Authority the authority to impose further regulations which the developer must meet.

Who Benefits

In Reading, low- or moderate-income families or elderly households will be eligible for placement in the units. At this time, the Reading Housing Authority states the greatest need is for low-income family units; it will require the provision of such units where feasible. The Housing Authority will use state guidelines to determine low-income eligibility.

Management

The developer of the townhouse development will retain ownership of the units, and manage and maintain them. It is unclear at this time whether the tenants will come from the Reading Housing Authority's waiting list, or whether the developer will advertise for low-income households to fill vacancies. This issue will undoubtedly be addressed with the first inclusionary project.

Preservation of Affordability

Nowhere in the amendment is there a discussion of the length of time the developer/owner must make the provided units available to low- or moderate-income households, nor does the amendment state what might happen to the units should the developer sell them. Presumably, this issue will be resolved by the Board of Appeals during individual project review.

Outcome

Reading has adopted the bylaw establishing its inclusionary housing program only recently. At this writing, no units have been created.

Boston

The first Boston Linkage Program became effective at the end of 1983. It required developers to pay an impact fee of \$5 per square foot in excess of 100,000 square feet over a period of 12 years. In April 1986, the Zoning Commission adopted the Boston Redevelopment Authority's text amendment which revised the Development Impact Project Regulations for housing. The revision shortened the payment period from 12 to 7 years,¹³ and changed some of the language in the amendment.

The purpose of the article, as stated in the Zoning Code Amendment, is to "...establish a balance between new large-scale real estate development and the housing needs of the City, and to mitigate the impacts of large-scale development on the available supply of low- and moderate-income housing."¹⁴ The program guarantees neighborhoods money to create or restore low-/moderate-income housing through the Neighborhood Trust when developers build or renovate large retail business, service, institutional, educational or hotel structures downtown.

Requirements

Developers of new or renovated retail business, service, institutional, educational or hotel/motel structures or developers whose projects directly reduce the supply of low- and moderate-income dwelling units are required to:

- Contribute a Housing Grant of \$5 for each square foot in excess of 100,000 square feet to the Neighborhood Housing Trust in 7 annual installments. or
- Contribute to the creation of housing units for low-/moderate-income residents of the City at a cost at least equivalent to the amount of the Housing Contribution Grant due.

Incentives for Developers

The City grants developers variances, conditional use permits, and exception or zoning map or text amendments for their project. Partially

13. See Appendix for a copy of the Amendment. A companion amendment (No. 105) will require developers to contribute an additional \$1./sq.ft. in excess of 100,000 sq.ft. in 2 annual installments. The extra \$1. will be used for the creation and funding of job-training programs.

14. Source - Text amendment No. 104, effective April 1986 - Commonwealth of Mass. City of Boston Zoning Commission - Article #26 under Chapter 665 of the Acts of 1956.

in response to those who criticize added density and height bonuses in the central business district, the revised amendment will attempt to lure developers out of the downtown area to less developed areas on the fringes of the central core where the BRA believes density and height increases will have less impact. In some cases, the program will actually link desirable downtown parcels to parcels in neighborhood areas.

Location of Units

The Neighborhood Housing Trust will construct new housing within City neighborhoods. Depending on the location of the new Development Impact Project, 10% to 20% of the Housing Contribution Grant shall be reserved for the "impacted" neighborhood(s) -- the neighborhood(s) where the new development is to be located or the neighborhood(s) adjacent to it. The Boston Housing Partnership may funnel some of the monies to local community development corporations to rehabilitate and/or construct new low- and moderate-income housing units in the "impacted" neighborhoods or other City neighborhoods.

Who Benefits

The primary beneficiaries of the program will be low- and moderate-income residents of the City of Boston; those households whose total annual income is not more than 80% of the median income for the Boston area as set forth by the U.S. Department of Housing and Urban Development's regulations.

Management

While the Neighborhood Housing Trust will receive and administer monies collected from developers of impact projects, the management issues such as selection of tenants, monitoring of sales and resales, and other issues relating to the program are not clear at this time.

Outcome

The Neighborhood Housing Trust will receive an estimated \$34-35 million dollars spread over 12 years from developers who received project approvals under the provisions of the first amendment.

LEXINGTON INCLUSIONARY HOUSING POLICY

PROGRAM OUTLINE

BENEFICIARIES	PROGRAM REQUIREMENTS	INCENTIVES	MANAGING AGENCIES	AFFORDABILITY CONTROLS
Families with very low, low, moderate or middle-incomes.	<ul style="list-style-type: none"> • 5% development's d.u. donated to LHA for low-income tenancy, or • 15% development's d.u. offered for sale ² to LHA for low-income tenancy, or • 25% development's d.u. set aside for purchase/lease by eligible moderate-income households, or • 40% development's d.u. set aside for purchase by eligible middle-income households, or • Cash payment to LHA or LexHAB, equivalent to 3% of sales price of all units in development (if efforts to provide d.u. through above options prove fruitless). 	<p>Housing developer gains favorable recommendation from LPB for his/her proposal for increase in density.</p> <p>Reduction in cost of surplus municipal buildings for conversion to housing.</p>	<p>Developer proposes how he/she will meet requirement.</p> <p>LHA manages & maintains units for low-income tenancy which have been purchased from or donated by the developer.</p> <p>LexLab monitors sale & resale of limited-equity units, verifies income eligibility of applicants of these units, and verifies incomes of potential moderate-income tenants of rental units.</p>	<p>Units donated to or purchased by LHA or LexHAB affordable indefinitely.</p> <p>Units retained by developers & leased to eligible households have provisions for control on rental units for an indefinite time.</p> <p>Units sold to eligible moderate-income households have resale controls.</p> <p>Developers who retain ownership of units, manage & maintain these units.</p>

1. Some/all affordable d.u. may be located off-site of development if units are newly created or located in an existing structure if their construction constitutes a net increase in the number of d.u. in the structure.
2. Purchase price is established by housing subsidy program.

d.u. - dwelling unit

LPB - Lexington Planning Board

LHA - Lexington Housing Authority

LexHAB - Lexington Housing Assistance Board.

NEWTON 10% ORDINANCE
PROGRAM OUTLINE

BENEFICIARIES	PROGRAM REQUIREMENTS	INCENTIVES	MANAGING AGENCIES	AFFORDABILITY CONTROLS
Low-income families & elderly households who either hold Section 8 Certificates or are eligible for public housing assistance.	<ul style="list-style-type: none"> 10% development's d.u. offered for sale 1 to City of Newton for low-income tenancy, or Provision of all/some of required d.u. on a site different from development, but within the same City ward, or Cash payment equivalent in value to units which otherwise would have been provided within the development, or A combination of any/all of the above methods. 	<p>Special permit granted by the Board of Aldermen for apartment house, hotel, garden apartments or attached dwellings. An increase in density for proposed residential development to a level greater than allowed by right.</p> <p>Reduction in cost of surplus municipal buildings for conversion to housing.</p>	<p>Board of Aldermen determines requirements.</p> <p>NCDA owns units acquired by purchase or developer donation.</p> <p>NHA manages these units & rents them to households eligible for public housing assistance.</p>	<p>If money to purchase units is not available, the developer must lease units to tenants eligible for federal or state subsidy program for 15 years.</p> <p>NHA maintains lists of eligible Section 8 Certificate holders & notifies them of a unit available from the developer.</p> <p>Developers, who retain ownership of units, manage & maintain these units.</p>

1. Purchase price is established by housing subsidy program.

d.u. - dwelling unit
NHA - Newton Housing Authority
NCDA - Newton Community Development Authority

READING LINKAGE PROGRAM
PROGRAM OUTLINE

BENEFICIARIES	PROGRAM REQUIREMENTS	INCENTIVES	MANAGING AGENCIES	AFFORDABILITY CONTROLS
Low and moderate - income families and elderly households.	<ul style="list-style-type: none"> • 10% development's d.u. set aside for lease to low or moderate-income families or elderly households, or • Provision of all/some of required d.u. on a site different from the development, elsewhere in town, or • Cash payment to RHA equal to \$2,000 X No. Units X (CPI at time of application/CPI prior to 1/85). 	<p>Granting of a special permit to construct townhouses at a level of density greater than that allowed by right.</p> <p><u>RHA</u> determines the option, where units will be located.</p>	<p><u>Developer</u> will own, manage, and maintain units.</p> <p><u>Uncertain</u> at this time.</p>	

d.u. - dwelling unit
RHA - Reading Housing Authority
CPI - Consumer Price Index

BOSTON LINKAGE PROGRAM
 DEVELOPMENT IMPACT PROJECTS - HOUSING
 PROGRAM OUTLINE

BENEFICIARIES	PROGRAM REQUIREMENTS	INCENTIVES	MANAGING AGENCIES	AFFORDABILITY CONTROLS
Low and moderate-income residents of the City of Boston.	<p>Developers of new or renovated retail business, service, institutional, educational or hotel-motel structures or developers of projects which directly result in a reduction in the supply of low & moderate income dwelling units are required to:</p> <ul style="list-style-type: none"> • Pay a Housing Contribution Grant of \$5/sq. ft. in excess of 100,000 sq. ft in 7 annual installments to the Neighborhood Housing Trust, or • Create or cause the creation of housing units for low or moderate-income residents of the City at a cost at least equivalent to the amount of the Housing Contribution Grant due. 	<p>Receipt of a variance, conditional use permit, exception or zoning map or text amendment for the project.</p>	<p>NHT will receive and administer monies from the development impact exactions.</p> <p>Other management issues are unresolved at this time.</p>	<p>No units yet produced. Provisions unknown.</p>

* A companion amendment (105) will require developers to contribute an additional \$1/sq. ft. in excess of 100,000 sq. ft. in 2 annual installments. The extra \$1 will be used for the creation and funding of job-training programs.

Other Local Programs

Programs in five other communities in the MAPC region deserve mention in this report.

Cambridge has proposed an inclusionary housing program which requires developers of new residential, office, institutional and retail projects to provide low- and/or moderate-income family housing. Details of the proposal are included in the Appendix of this report. While the City Council has not been able to gain the required 2/3 majority vote needed to pass the ordinance, the Planning Board, which recently completed a local housing need study, recommends that developers be encouraged to comply with the proposal's requirements voluntarily.

Hingham, Concord, and Bedford have incentive zoning programs, parts of which resemble an inclusionary housing program. In Hingham, the program is tied to a special permit process which allows residential cluster developments. Under this provision, developers can receive a 10% density bonus when they allow the Hingham Housing Authority to purchase the additional units this density bonus permits. The Housing Authority will make these units available to low- and moderate-income households. No units have been built yet, but one developer has submitted a proposal.

Since 1981, Concord has allowed developers to apply for special permits to construct planned residential developments. Under this zoning bylaw, developers can receive density bonuses when they conserve significant open space or provide for low- or moderate-income housing. The bylaw allows developers to increase the number of units by 15% when 15%-40% of the total number of units in the development are low- or moderate-income housing. However, in the past 5 years since the bylaw was adopted, no developers have proposed to construct a mixed-income development.

In Bedford a bylaw almost identical to Concord's allows developers a 15% density bonus when 15%-40% of the total units in the development are set aside for low- or moderate-income housing. Similarly, the density bonus is tied to a special permit process allowing planned residential developments, as is the case in Concord. Also in Bedford, no developers have constructed planned residential developments where affordable units are created.

In Hingham, Concord, and Bedford, the density bonuses provided by the cluster or planned residential development bylaws may not be enough incentive to assure developers' participation. (See Economics of Inclusionary Housing.)

At the 1986 Spring Town Meeting, the Town of Southborough adopted a new zoning bylaw which would allow a single family or cluster developer a density bonus of up to 25%, if the extra units in some way are priced to provide more affordable homeownership opportunities. Developers who provide affordable units may also be exempted from proposed growth controls.



Chapter 2

Legal Issues of Inclusionary Housing

Whenever a significant new zoning or planning technique is introduced into the collection of tools available to local officials a debate is certain to ensue over its legality. Inclusionary housing programs are no exception. In Massachusetts, both the Boston Linkage Program and the Newton Incentive Zoning Program have been challenged recently in separate suits before the state courts. The challenge to the Newton Ordinance was rejected by the Massachusetts Supreme Judicial Court on a procedural basis. Boston is governed by its own special zoning statute and not by MGL Ch. 40A which regulates zoning in the rest of the Commonwealth. The Boston Linkage Program was struck down by the Superior Court on the basis that Boston lacked the statutory authority to enact the program. In his opinion, which the City is appealing, the judge stated:

...the Legislature amended the general zoning enabling statute, G.L. c. 40A, in 1975 to authorize expressly the enactment of various linkage provisions in the towns and cities governed by that statute. If the Legislature had meant for the City of Boston to have the same authority, it more than likely would have amended the Boston enabling act accordingly. It has not.¹⁵

While the legal questions have not been definitively resolved, it appears that in every municipality but Boston inclusionary zoning programs or

15. Memorandum of Decision on Defendants' Motion to Dismiss and Plaintiff's Request for Declaratory Judgement, Commonwealth of Massachusetts, Suffolk Superior Court, Civil Action No. 76438: Rappaport et al v. General Hospital Corp. et al.

linkage regulations will withstand a legal challenge if the ordinance which sets up the program is properly drafted, and if careful consideration is given to the key legal issues. In this section, these relevant legal issues will be reviewed to provide guidance to local officials in designing their programs.

In recent decades, a number of new tools relating to land-use management have been introduced, e.g., ordinances which control or limit growth, protect wetlands, and other environmentally sensitive areas, or require developers to provide open space, parking, or other public improvements. Each has had to withstand similar legal challenges. The legal issues can be addressed under two questions:

- Does the municipality currently have the statutory authority to adopt the ordinance or bylaw, and
- Is the technique constitutional?

Linkage and Inclusionary Housing Programs must satisfy these same legal issues.

Authority Under State Law

A critical legal issue is whether a local municipality, as a creature of the Commonwealth, has the statutory authority to impose the inclusionary or linkage requirement.

Massachusetts is unique in the nation in that powers which are constitutionally permissible and not reserved by the Legislature as the prerogative of the Commonwealth are automatically delegated to the municipalities under Article 89 of the Amendments to the Constitution, the Home Rule Amendment. Zoning, under the old Ch.40A, the Zoning Enabling Act, was one of those areas reserved by the Legislature, as was pointed out by the SJC in an earlier inclusionary housing case.

Consistent with these Home Rule powers, the new Zoning Act, enacted as Chapter 808 of the Acts of 1975, does not necessarily limit the zoning rights and powers of municipalities. Most importantly for the purposes of inclusionary zoning, the new Zoning Act included specific language clearly allowing for zoning which requires the inclusion of low- and moderate-income housing under certain circumstances.

The new language may in part have been included in response to the challenge to an earlier version of Newton's program, Middlesex and Boston Street Railway Corp. v. Board of Aldermen, decided by the SJC in 1978, but which dealt with a permit issued under the older Zoning Enabling Act.¹⁶

16. Middlesex and Boston Street Railway Corp. v. Board of Aldermen, 371 Mass. 849 (1977).

In its decision, the SJC held that the Newton Board of Aldermen did not have the authority to impose the 10% inclusionary requirement because 1) the Zoning Enabling Act did not authorize such a requirement, and 2) even if it had, the municipality (at the time) did not have a local ordinance spelling out the requirement. It was not enough, the court maintained, to rely on the overall special permit-granting authority delegated to the Aldermen by the Zoning Ordinance, since neither Ch.40A nor the ordinance specifically included low- and moderate-income housing as a possible condition. Having rejected the Newton program on statutory grounds, the Court pointedly declined to rule on the issue of constitutionality.

In the preamble to Ch.808, The Zoning Act, the Legislature included in the statement of purpose "to encourage housing for persons of all income levels." More specifically, Section 9 of the Zoning Act addresses the issue of inclusionary housing:

Zoning ordinances or by-laws may...provide for special permits authorizing increases in the permissible density of population or intensity of a particular use in a proposed development; provided that the petitioner or applicant shall, as a condition of the grant for said permit, provide certain open space, housing for persons of low- and moderate-income, traffic or pedestrian improvements or other amenities. Such zoning ordinances or by-laws shall state the specific improvements or amenities or locations of proposed uses for which the special permits shall be granted, and the maximum increase in density of population or in density of use which may be authorized by such special permits.¹⁷

Newton's current ordinance was drafted subsequent to the adoption of Ch.808.

While an argument could be made for a broader interpretation based upon authority granted by the Home Rule Amendment, a cautious approach would suggest that an ordinance or bylaw should be tailored closely to the language of Ch.40A, Section 9. The critical elements of an ordinance based on Section 9 would be:

- The inclusionary requirement is part of the special permit process, and is a voluntary incentive;
- The inclusionary requirement is "in exchange for" the grant of a bonus. The maximum density bonus provided the developer is included in the ordinance or bylaw; and
- The inclusionary requirement is clearly indicated in the ordinance or bylaw language.

17. M.G.L. Ch. 40 A, Section 9.

The nature of the special permit process dictates that the program be an incentive program. In Massachusetts, the SJC has held that a community cannot make all development in a specific zone subject to a special permit--some use must be retained by right to the property owner. Thus, a mandatory program would have to be instituted by legislation, or by the courts, there appearing to be no statutory mechanism for a local mandatory initiative. The exception to that might be an inclusionary mechanism tied to a district subject to strict growth management, where, for example, an inclusionary developer might be exempted from a tight growth schedule in return for the provision of affordable units. While this kind of flexibility should not be ruled out, it raises substantial legal questions well beyond the scope of this report.

Ch.40A, Section 9 does not specify that the requirement of providing "housing for persons of low and moderate income" can be tied only to residential development, but rather allows for both an increase "in the permissible density of population or intensity of a particular use." Thus, a linkage program tied to commercial development would appear to be authorized as well.

In Lexington, the inclusionary housing program is administered through a housing policy, through a process sometimes referred to as "concept zoning." Lexington currently allows multi-family use in its RD district through a special permit, but all of the area currently zoned RD is fully built. Thus, a developer seeking to construct new multi-family housing must seek a rezoning to RD from the Town Meeting, for which Planning Board approval has been customarily needed. Developers must present detailed plans to the Town Meeting at the time of the rezoning which includes how they intend to meet the requirements of the Inclusionary Housing Policy, and other conditions which may be recommended by the planning board. Whether this process would be seen by the courts as a reasonable interpretation of Ch.40A without the adoption of a specific inclusionary bylaw is an open question.

It would appear reasonable that an inclusionary housing or linkage program which places the developers' cash contributions in some type of housing trust fund would still be authorized under Section 9, provided the purpose of the funds was to support the development of low- and moderate-income housing. A program which stresses the development of actual units, and provides for the cash equivalent for special cases where the provision of units is not feasible, further avoids challenge.

Cash contributions raise another issue important in Massachusetts. The Massachusetts Constitution specifically prohibits local municipalities from levying taxes without legislative approval. Thus, a linkage exaction must not be seen as a tax. This issue would be satisfied if:

- The funds were to be used for housing;
- The level of the contribution was commensurate with the impact of the development on the local housing market or the costs of the additional development permitted; and

- The cash contribution was voluntary, i.e., the developer could avoid the payment by electing some other type of development.

Constitutional Issues

The essential federal constitutional test of any zoning or other land-use tool, established by the U.S. Supreme Court in its landmark 1926 decision, Euclid v. Ambler Realty Co., is whether or not the particular tool is an appropriate exercise of the police power of the state to protect the public health, safety, morals, and general welfare.¹⁸ The same issue is mirrored in the Massachusetts constitution. In Massachusetts, the legislature has enacted laws such as Ch. 774, the "Anti-Snob Zoning Law," and various types of legislation which grant to municipalities the power to regulate the affordability of housing, for example, through such techniques as rent control and condominium conversion control. All have been sustained by the courts, clearly indicating that affordable housing is in general an appropriate area for the exercise of the police power.

There are three specific constitutional tests which must be carefully considered when designing an inclusionary ordinance or bylaw, or any other regulatory technique. These are:

- Taking without compensation,
- Due process, and
- Equal protection.

Taking Without Compensation

At what point does the legitimate exercise of the police power so deny a property owner the use of his land as to constitute a taking for a public purpose without just compensation? In Massachusetts, taking appears not to be an issue in zoning and land-use regulation in those situations where some economic use remains as a matter of right to the property owner. Thus, a voluntary inclusionary housing program based upon incentives which still provides for the development of other uses without the inclusionary requirement, would not be found to constitute a taking.

Alan Mallach, in his thorough work, Inclusionary Housing Programs, Policies and Practices, suggests a test, among others, of "economic feasibility." According to Mallach, "Based on a reasonable level of

18. Euclid v. Ambler Realty Co., 272 U.S. 365, as referenced in Sturgis v. Chilmark, 380 Mass. 246 (1980).

economic analysis and thoughtful consideration, it should be at least facially indicated that the provision of the required number and type of low- and moderate-income units either requires no loss on the developer's part; or, alternatively, that the loss is modest enough so that the development, taken as a whole, retains its economic feasibility." ²⁰



2350 Commonwealth Avenue, Auburndale, (1976) includes 4 on-site low-income family units.

Due Process

There are essentially two types of constitutional problems under due process, sometimes described as "procedural" and "substantive." Procedural due process, as one might expect, is satisfied if the ordinance or bylaw allows for reasonable and proper notification, hearing, and appeal. Perhaps the most important consideration for an inclusionary housing program would be a mechanism for the owner to

20. Alan Mallach, Inclusionary Housing, Programs and Practices, Center for Urban Policy Research, Rutgers, The State University of New York, 1984, p.34.

seek relief from the provisions when imposing those conditions would constitute a hardship. Regulations which are adopted as part of the local zoning ordinance or bylaw will generally not find procedural due process to be a problem, since zoning regulations already include variance procedures to serve this purpose.

With the issue of substantive due process, it is critical to be able to demonstrate that a rational relationship exists between the regulation and the public purpose to be served, and that the means of achieving that purpose are also reasonable.

In a case involving the phased growth controls of the Town of Chilmark, the Massachusetts Supreme Judicial Court clearly stated that the burden is on the plaintiff to demonstrate that a land use regulation was "clearly arbitrary or unreasonable." According to the SJC opinion, "Every presumption is made in favor of the by-law, and, if its reasonableness is fairly debateable, it will be sustained."²¹

The SJC did agree that some finding of fact was required: "The circumstances existing in a municipality have always been considered in the process of passing on the constitutionality of the zoning provision. We have (in the past) expected the municipality to bring forward some indication that the zoning provision has some reasonable prospect of a tangible benefit to the community."²² In the Chilmark case, the court reversed the lower (Land Court) ruling that the burden of proof regarding the environmental sensitivity of soil conditions, etc., belonged to the town, holding that a "prima facie showing of a rational basis for its action" was required.

A community considering an inclusionary housing program is thus well-advised to undertake at least a general review of housing need in the community prior to designing its program, and to include a clear statement of purpose in the language of the local regulation. The amendment to the Boston Zoning Code which established the Linkage Program is a good example of such a statement:

SECTION 26A-1. "Statement of Purpose. The purpose of this article is to promote the public health, safety, convenience and welfare; to prevent overcrowding and deterioration of existing housing; to preserve and increase the City's housing stock; to establish a balance between new, large-scale real estate development and the housing needs of the City; and to mitigate the impacts of large-scale development on the available supply of low and moderate income housing by provisions designed to:

21. Sturgis v. Chilmark, 380 Mass. 246 (1980).

22. Ibid.

1. Afford review and to regulate large-scale real estate development projects which directly or indirectly displace low or moderate income residents from housing units or contribute to an increase in the costs of housing.
2. Increase the availability of low- and moderate-income housing by requiring developers, as a condition of the grant of deviations from the Zoning Code or the grant of an amendment to the zoning map or text, to create low and moderate income housing or to make a housing contribution grant to the Neighborhood Housing Trust ("Trust").²³

The issue of substantive due process, it should be noted, is more problematic when the inclusionary or linkage requirement is seen as an exaction. Customarily, an exaction is a fee or requirement imposed upon a developer as a condition of subdivision approval to provide public facilities or infrastructure. According to Mallach, "Case law has consistently held that for such an exaction to be legal, there must be a relationship between the nature and extent of the exaction and the facility needs generated by the residents in the development itself, although the precision with which that relationship must be established has become substantially weaker in recent years."²⁴

That requirement for a "rational nexus," applied to a housing exaction might require that the level of exaction reflect the level of new housing demand generated by the development. The Boston Redevelopment Authority, in working out the details of the Linkage Program, sought to establish that nexus through a statistical analysis of the external impacts of major commercial development. The level of linkage payment is purported to reflect that analysis.

An inclusionary housing program which emphasizes the provision of units on site can be interpreted as an exercise of the municipality's regulation of land use, not an exaction, and the substantive due process test will not be rigorous. However, the more the program results in the provision of units off site, or the payment of cash in lieu of units, the greater can be made the argument that the inclusionary requirement is in fact an exaction. This is clearly the case with linkage programs which apply the requirement to nonresidential development. It may also be the case with inclusionary housing programs where the program is so designed that the provision of units on site is rarely a realistic alternative.

23. Boston Zoning Code, Section 26A-1.

24. Mallach, p.36.

Equal Protection

The principal question here is whether the burden of the land-use regulation falls unreasonably on one group, or whether a particular group is treated differently from another. Again, the test is reasonableness.

In recent years, it has proven difficult to challenge successfully a local ordinance on the grounds of equal protection, other than in cases dealing with customarily protected classes, e.g. race, sex, age, or religion. Mallach suggests that inclusionary zoning bylaws which impose inclusionary requirements in one zone but not in a ²⁵ second, otherwise identical zone, will be subject to challenge. The test may be whether a rational basis exists for the selective application of the program.

In summary, an inclusionary housing or linkage program would likely withstand a constitutional challenge by observing four important standards related to the issues of taking, due process, and equal protection:

- A by-law or ordinance should allow for some form of development by right, and allow for economically feasible developments;
- The inclusionary housing or linkage requirement should be based upon at least a general review of local housing need, and the level of linkage payment, in particular, should be related to the estimated impact of the development;
- The inclusionary housing programs should stress the development of units on site, as much as possible; and,
- Ordinances or bylaws should have a clear rationale for any selectivity in the application of the program requirements.

25. Ibid.



Chapter 3

Implementation of Inclusionary Housing Programs

This section of the report focuses on a number of critical issues a community needs to consider when designing an inclusionary housing program.

- A community must determine what its local/regional housing needs are and target the program to provide for those households.
- A community must decide whether to require that developers locate the new affordable units on the site of the new developments, or allow them other options; off-site locations, or cash in lieu of units.
- A community must decide what incentives it is willing to offer, or what resources it can make available to developers to encourage their participation in the program. The community must weigh how much incentive must be offered to ensure the production of an adequate number of units for the targeted households against the costs of such incentives to the community.
- A community must create a process to ensure that developers comply with the program's requirements once permits have been approved and incentives given.
- A community must also meet its obligations to the developer participating in the program.

Housing Need and Housing Production

Inclusionary housing programs can meet only some of a community's low- and moderate-income housing needs. Because the program is tied to other multi-family residential development occurring within the municipality, the numbers and kinds of units created will depend on the rate of that development, new opportunities for growth, and local resources, such as CDBG funds, city or town-owned land or surplus buildings which a community can make available for housing development. A community designing an inclusionary housing program will need to determine what its local and regional housing needs are, and establish whom its program will benefit. Based on these needs, a program can be designed to promote either rental or homeownership opportunities.

Lexington has identified a broad range of households needing affordable housing as the focus of its Inclusionary Housing Policy. While the program requirements provide developers with the option to create housing for low-, moderate- and middle-income households, only units for low- and moderate-income families and elderly persons have been planned or constructed thus far.

Since the late 1970s, when the Inclusionary Housing Policy was first implemented in Lexington, a total of 179 new affordable housing units have been planned.²⁶ To date, 80 of these units have been completed and occupied:

- 19 low-income rental units, and
- 61 moderate-income limited-equity condominiums.

Seventy-eight of these units are located in two surplus school buildings, converted to mixed-income residential development. The remaining two low-income rental units are located in a rehabilitated two-family house, which the developer provided off the site of his new residential development.

An additional 99 units either are under construction or have been approved by Town Meeting vote:

- 36 low-income rental units, and
- 63 moderate-income rental units.

Thirty-eight of these units -- 10 low-income and 28 moderate-income rental units -- will also be located in a converted school. The remaining 61 units -- 26 low-income and 35 moderate-income rental units -- will be located on the site of and integrated into new mixed-income residential developments.

26. These statistics were compiled by the Lexington Planning Department. The exact breakdown of family vs. elderly housing units is not available.



Muzzey Junior High School conversion, Lexington, (1983) includes 61 moderately-priced, limited equity condominiums and 10 low-income rental units.

The Lexington Housing Authority will own and manage 35 of the low-income rental units. The Muzzey High Condominium Association, members of which own the 61 moderate-income units in the converted school, manage the other 10 units which are rented to low-income households. The remaining 73 units -- 10 low-income rental units and 63 moderate-income rental units -- will continue to be owned and managed by the developers.

It is important to note here, that the Lexington Planning Department includes in its statistics, two developments -- the Franklin School conversion and Katahdin Woods -- which are being financed under state subsidized housing programs. The Franklin School will be converted to 10 low-income and 28 moderate-income rental units by Greater Boston Community Development, using MHFA and Sharp monies, and will be locally subsidized by the Town's deferral of the acquisition payment for the school building. The developer of Katahdin Woods received a Comprehensive Permit and will be using the Tellar program to finance the development of 26 low-income rental units.

These are examples of the Town's creative use of state housing programs, public subsidies, and local incentives to encourage both private and non-profit developers to provide for the needs of Lexington's low- and moderate-income households. Strictly speaking, they do not fit this report's definition of what constitutes an inclusionary housing program. Developers can use the Comprehensive Permit to construct multi-family, mixed-income developments, and/or can apply for Sharp and Tellar financing without a community's adoption of an inclusionary housing program.

A COMPARISON OF THE REQUIREMENTS OF NEWTON'S 10% ORDINANCE
AND LEXINGTON'S INCLUSIONARY HOUSING POLICY

NEWTON	LEXINGTON
TARGET POPULATION	Very low, low, moderate, middle-income family and elderly households.
INCOME RANGE	Established by state and federal subsidy program guidelines. (\$17,000-\$25,850 - based on Jan. 1986 figures for family of 4).
OCCUPANCY PREFERENCES	Section 8 Certificate Holders or those registered for public housing assistance in the City.
NUMBER OF UNITS REQUIRED	10% - low-income units either leased by developer to eligible households, or sold to the City at housing program levels. Low-income rental.
TYPES OF UNITS REQUIRED	15-year rental obligation by developer/owner of leased units. Permanent controls when units are acquired by the City.
OCCUPANCY AND AFFORDABILITY CONTROLS	No controls on early condominiums. Resale controls now placed on limited-equity condominiums. Permanent controls on rental units whether operated by Town or developer.

LEXINGTON INCLUSIONARY HOUSING POLICY

PRODUCTION OF AFFORDABLE UNITS 1979-86

	Potter Pond 1979	Morrow Crossing 1979	Parker Manor 1979	Muzzey Jr.High 1983	Franklin School (Under construction) 1985)	Country-side (Approved 1985)	Choate-Symmes (Approved 1986)	Katahdin Woods (Approved 1986)	Totals
Low-Income Rental Units	0	2 ¹	7	10	10	0	0	26	55
Moderate-Income Rental Units	0	0	0	0	28	25	10 ³	0	63
Moderately-Priced Condominiums (\$40,000 to \$50,000/unit)	0	0	0	61 ²	0	0	0	0	61
Market Rate Units	(100)	(21)	(21)	(0)	(0)	(26)	(195)	(100)	(463)
Cash Contribution	\$900,000	\$0	\$0	\$0	\$0	\$400,000	\$0	\$1,300,000	
Totals for below market rate units & cash contributions	0 units \$900,000	2 units	7 units	71 units	38 units	25 units	10 units \$400,000	26 units	179 units \$1,300,000

Notes:

1. Two-family dwelling purchased by Town at reduced cost from developer in lieu of on site units.
2. Units sold to income-eligible households; units are limited-equity condominiums with resale restrictions placed in deeds.
3. Provision of 10 units still being negotiated between developer and town.

NEWTON 10% ORDINANCE

LOCATION OF INCLUSIONARY UNITS 1972 - 1986

YEAR	FAMILY			ELDERLY			Cash in lieu of units	TOTALS
	On-site New Development	School Conversion Public Land	Off-site New construction Rehabilitation	On-site New Development	School Conversion Public Land	Off-site New construction Rehabilitation		
1972	3		2					5
1975	5		1					6
1976	4		4		12*			20*
1977	2							2
1978			6		5			11
1979	1	4						5
1980			7					7
1981		3	6		6	1		16
1982	2		4					6
1983	7				2			9
1984							+	+
1985	4				3		+	7+
1986	1	2			11	6	+	20+
TOTALS	29	9	30	39	7	0	+	114+

Notes:

* Cash donation, in addition to the provision of units.

+ Cash donation, in lieu of units.

In Newton, the purpose of the 10% Ordinance is to provide rental housing for low-income families and elderly households. As of April 1986,

- 46 elderly units, and
- 68 family units of two or more bedrooms.

a total of 114 low-income rental units are either in the planning and construction stages or are already completed and occupied.²⁷ These units have been produced over a period of fifteen years, through the implementation of the City's 10% Ordinance.

- 68 units (60% of the total number of units developed) are located within newly constructed residential developments.

27. These statistics were compiled by the Department of Planning and Development, Newton, Massachusetts, April 1986.

- 30 units (approximately 25% of the units developed) are rehabilitated or newly constructed two or three-family units, which the developers have purchased or built off the site of their new residential developments.
- 8 units will be constructed on City-owned land, Auburndale Yard, the former site of the Department of Public Works.
- 8 units created under the 10% Ordinance are located in surplus school buildings, converted to mixed-income residential use.

At Auburndale Yard and two public school conversions -- the Weeks Junior High School and the Pierce School (where developers provided an additional 66 low-income rental units to the City)--the Newton Community Development Agency (NCDA) requested proposals from residential developers for the parcels to be converted to mixed-income housing. The NCDA established the total number of units which the developers could create on each site, the number of subsidized units the developers would have to provide the City, and suggested a sales price for the land or land and buildings.

Developers submitted proposals to meet the NCDA's specifications and negotiated with the City on the sales price. At Auburndale Yard, 8 of the 50 units will be subsidized; at Weeks Junior High, 42 of the 75 units will be subsidized, and at Pierce, 24 of the 34 units will be subsidized.



Auburndale Yard, Auburndale, (1986) when complete, the site will include 2 on-site low-income family units, low-income elderly units and 50 market rate units.

The City has acquired 55 units. The remaining 59 units are either owned and managed by the developers, or are still being planned or built.

These production statistics demonstrate that an inclusionary housing program can be modeled to meet the specific needs of diverse communities. In the following sections we will discuss the advantages and disadvantages of various developer requirements, incentives communities can offer to assure a project's feasibility, and ways to avoid potentially serious implementation problems.

Program Requirements

In Lexington and Newton, developers can meet the requirements of the local inclusionary housing program in several ways.

- They may set aside units within new residential developments,
- Build new units or substantially rehabilitate units located elsewhere in the community,
- Donate cash in lieu of the required units, or
- Meet the requirements through some combination of these methods.

One significant difference between the two communities' programs is who sets the terms of the agreement. In Newton, the Board of Aldermen determines the developer's contributions; in Lexington, the developer submits his/her own proposal for meeting the policy requirements.

The Location of Required Units

The location of the units developed for lower-income households, the degree of concentration of the below-market rate units within a multi-family development and the extent of the range in incomes have been controversial issues throughout the history of inclusionary housing programs.

In Newton, during the fifteen years of the program's existence, the Board of Aldermen has required some developers to locate the low-income units within the proposed residential development and others to rehabilitate or construct new low-income housing units elsewhere, but within the same City ward.

The Aldermen's preferences have shifted and evolved over time: developers involved early in the program were required to build the low-income units on-site; later, developers were allowed to locate the required units off the development site; most recently, the Board's emphasis has reverted back to units located within the proposed development.

NEWTON 10% ORDINANCE

LOCATION OF CITY ACQUIRED VS. DEVELOPER LEASED UNITS

	City Acquired	Developer Leased	Totals
On-Site	20	48	68
Off-Site	23	7	30
<u>School conversion</u>	12	4	16
<u>Public Lands</u>			
Totals	55	59	114

Notes:

Two-thirds of the on-site units are developer owned, reflecting the state's reluctance in the past, to grant subsidies for on-site units.

The City has acquired many of the school units through developer donations, as part of the sales agreement between developers and NCDA.

There has been an adverse community reaction to developers providing off-site units to fulfill the 10% Ordinance requirements. Neighbors of some of the off-site units have resisted their construction, especially in cases where neighbors were critical of the quality of the units developers were providing. Their resistance to off-site construction has had the positive effect of assuring quality units.

Other neighborhood critics, however, were concerned that developers who purchased and rehabilitated existing units in order to comply with the ordinance were competing with families for these homes, and thus were driving up the costs of existing houses in Newton's neighborhoods. These critics preferred that developers add new units to the housing stock, whether or not they were located within the proposed development. While both criticisms are important, such arguments can often mask individual efforts to stem the construction of low-income housing within a neighborhood.

Still others, local proponents of the 10% Ordinance in Newton, have seen the construction of units off-site as undermining an important goal of the program -- to create new, socio-economically integrated housing opportunities.

However, the Board of Aldermen and the Planning Department remain proud of their innovative program and committed to providing housing for low- and moderate-income people who choose to live in Newton. The City consistently has revised the 10% Ordinance to respond to local criticisms and to strengthen it. Currently, the Board of Aldermen is studying a proposed, revised ordinance which would put the emphasis on requiring developers to construct low-income units within and as part of their new residential developments. For those units located off-site, a developer would be required to provide twice the number of low-income units, and these units, when constructed or rehabilitated, would be required to have a fair-market value which was not less than the median assessed value of a single-family home in Newton. Only existing houses which had been vacant for twenty-four (24) months could be rehabilitated to meet the requirements.

While the proposed revisions may at least partially address the concerns of the community, they are not likely to be well-received by developers who would prefer more, not less, flexibility in meeting the Ordinance's requirements. While a few who have developed under the 10% Ordinance considered the provision of on-site units for low-income households the "cost of doing business" in Newton, most would still prefer to locate units off-site, or offer a cash donation instead. Under the revisions, some developers suggest that it will be more difficult to find suitable locations for off-site units. Small parcels, on which developers can build the required number of units are difficult to find, especially within the same ward as the development.

Developers would prefer the City to allow them the opportunity to provide off-site units in other wards. Some argued further that if the City accepted a cash donation equivalent in value to the costs of developing the required units, more units for low-income households could be built since low-income units produced by the municipality presumably would not contain the range of amenities typically found in the type of luxury condominium developments often constructed under the Ordinance. While there are reasons to doubt this premise, and reasons to suggest that such a policy would, over time, undermine the intent of inclusionary housing programs, this argument warrants a thorough economic analysis.

Some developers and marketing agents have argued in the extreme that the on-site location of low-income family units threatens the economic viability of the whole development. The on-site location of units for low-income families, it has been suggested, is a sales deterrent, especially when the remainder of the units are designed as luxury condominiums. Salespersons and marketing managers claimed that condominium units located next to the units set aside for low-income families have sold less quickly than others in the development, and that buyers, in general, did not like the idea of having subsidized families living in their condominium development. All concede, however, that to date the developments have sold out completely as a result of the extraordinarily strong market in Newton.

The Newton Housing Authority has raised its own economic concern about on-site units. Such units, located on the site of luxury condominium



Gazebo, Auburndale, (1983) includes 3 on-site, low-income family units.

developments, must share the burden of the high condominium membership fees needed to support the maintenance of expensive amenities, such as recreation facilities, full-time on-site security, and so on. The Housing Authority or City (depending on who owns the units) remain minority shareholders and have little control over the use of the funds or the fee setting procedures. Rents which can be collected for these units will need to cover costs of membership fees and management overhead in the future.

Questions regarding the economic impacts of Newton's locational requirements have been matched by concerns about possible social impacts. Some observers have questioned the wisdom of placing one or two low-income families in the midst of a luxury condominium development. The staff at the Newton Housing Authority fears the families may remain isolated and suffer from a loss of community ties and a sense of cohesion due to the wide gap in income and lifestyle between themselves and condominium owners. Staff concur with developers and marketing agents, stating that the on-site location of low-income units has been most successful when the other units in the development have been sold as moderate- or middle-income units, rather than luxury units; or when units provided have been for elderly households rather than families.

While it should be noted that we did not interview the tenants of on-site units in either Newton or Lexington about their perceptions of the benefits and difficulties they have experienced with the program, there

are some clear advantages to this type of housing. Lower-income tenants gain access to local schools and jobs. They are free of the stigma and fear associated with dense, isolated, poorly managed and maintained public housing projects.

Further, the conclusions from a comprehensive study entitled "A Social Audit of Mixed-Income Housing" conducted for the Massachusetts Housing Finance Agency in 1974, provide relevant information about tenants' satisfaction with mixed-income developments, and supports the City's continuing efforts to provide units within new residential developments for low-income people.²⁸ The study's purpose was to test the assumptions of many in the housing industry, like the developers, marketing agents and housing authority staff in Newton, who believe that mixing income levels in the same development does not work. The study's central questions were "does living in a development characterized by a broad range of income levels lead to disgruntlement and discontent? Are tenants in MHFA developments, that is developments with a considerable income mix, less satisfied than tenants in similar developments that have a narrower range of income levels?"²⁹

The conclusions are in sharp contrast to the conventional wisdom of the success of mixed-income developments. Two of the study's findings are most relevant to the locational argument in Newton:

"Broad income mix 'worked' in the MFHA developments studied. There were high levels of satisfaction at all levels -- market, moderate-income and low-income -- principally because these developments were superior in design, construction and management." (emphasis added)

"Income mix as such does not seem to be an important determinant of satisfaction and dissatisfaction. This finding, which is contrary to the conventional wisdom, may be explained by the fact that, contrary to expectations, measurements of life-style, values, and attitudes did not reveal any significant differences between income levels."

Lexington, in contrast to Newton, has moved in the direction of providing developers with more flexibility in meeting the Inclusionary Housing Policy requirements. In 1985, the policy was revised to allow developers a variety of income targets and development opportunities for the provision of new housing units. Developers can propose to donate a small percentage (5%) of the units in the development for low-income tenancy, offer 15% of the units to the Lexington Housing Authority for purchase at funding agency levels, or set aside 25% of the units in the development for purchase or rent to moderate-income households. Developers may also

28. Ryan, W., Sloan, A., Seferi, M., Werby, E., All in Together: An Evaluation of Mixed-Income Multi-Family Housing, a summary report of the MHFA Social Audit, January 24, 1974.

29. Ibid.

NEWTON 10% ORDINANCE

LOCATION OF FAMILY AND ELDERLY UNITS

	On-Site	Off-Site	School	Totals
Family	29	30	9	68
Elderly	39*	0	7*	46
Totals	68	30	16	114

Notes:

*All the elderly units are located on-site, in new developments or converted schools, perhaps because the elderly are seen as the easiest group to integrate into mixed-income developments.

Approximately two-thirds of the units are going to families.

opt to provide some of the units off the site of the development, or elect to make a cash contribution to the town.

Lexington's program is newer than Newton's, and has, at this writing, produced fewer completed units. All but two of these units are located in two school buildings converted to mixed-income housing. Neither conversion was planned as a luxury development. One of the converted schools and another now under reconstruction, provide units for low- and moderate- income households only. Of the three planned developments which will be newly constructed rather than conversions, only one will have low-income and market rate units integrated in the same development. In Lexington, the gap between the household incomes of those living in the subsidized units and the incomes of those paying market-rates has not been as great as in some of the new developments in Newton.

This may be the outcome of a program where developers can play a larger role in determining how they will meet the inclusionary requirement. In effect, individual developments have been designed to serve a less diverse population. Whether by design, economic or political realities, or as a result of developer choice, the Lexington program, as a whole, has focussed on providing more moderate-income housing as opposed to low-income housing in their income-integrated developments. (See the chart, LEXINGTON INCLUSIONARY HOUSING POLICY, HOUSING PRODUCTION BY DEVELOPMENT PROJECT on the next page.)

Clearly, the location, mix, and concentration of the units developers are required to provide as part of their participation in an inclusionary housing program are controversial issues. The questions and issues raised here about the impact of the location of the subsidized units deserve careful examination by communities considering the adoption of an inclusionary housing program, in order to frame and implement a successful local program.

LEXINGTON INCLUSIONARY HOUSING POLICY

HOUSING PRODUCTION BY DEVELOPMENT PROJECT

DEVELOPMENT	RESULT	TOWN ACTION/ INCENTIVE	FUNDING	MANAGEMENT	AFFORDABILITY CONTROLS
Potter Pond 1979	\$ 900,000. ¹	Rezoning	N.A.	N.A.	N.A.
Morrow Crossing 1979	Two-family house (existing) in lieu of on site units.	Rezoning	Town monies from tax levy.	LHA	Yes
Parker Manor/ School Conver- sion, 1979	7 low-income rental units, 21 market-rate condominiums.	Nominal price for surplus school site. Density bonus.	Developer donation, Town subsidy.	LHA	Yes
Muzzey Jr. High School Conversion 1983	10 low-income rental units, 61 limited- equity condos.	Nominal price for surplus school site.	Private mortgages, Town subsidy, ² money received from Potter Pond contribution.	LHA/ Condominium Association.	Yes
Franklin School Conversion Under Construction	10 low-income rental units, 28 moderate- income rental units.	20 year deferral of payment for school site.	MHFA, SHARP, Town subsidy.	GBCD, Inc. (Developer)	Town has option to buy units.
Countryside Woburn Street Approved 1985	25 moderate- income rental units, 26 market-rate rental units.	Rezoning	Private	Developers, LexHAB will monitor income compliance.	Indefinitely.
Choate-Symmes Approved 1986	\$ 400,000, 195 market-rate rental units, 10 moderate- income rental units (still under negotiation.)	Rezoning	Private, nonprofit developer	Developer, LexHAB will monitor income compliance.	Indefinitely.
Katahdin Woods Approved 1986 ³	26 low-income rental units, 100 market-rate rental units.	Comprehensive Permit	Teller	Developer	Town has option to buy units when financing period expires.

LHA: Lexington Housing Authority

LexHAB: Lexington Housing Assistance Board

SHARP: State Housing Assistance for Rental Production

Teller:

Notes:

1. Developers renegotiated agreement with Town when LHA was unable to secure state or federal subsidies to purchase designated on site units.
2. Town locally subsidizes units by offering municipal property to developer for nominal fee.
3. Lexington includes this project under the Inclusionary Housing Program because the developer received a density bonus through Town action, and because the Town negotiated the first option to purchase the 26 low-income units when the finance period expires. The Town will need pay only the 1986 market rate prices at the time of the sale.

Cash Contributions

Cash contributions to housing trust funds for the purpose of creating new, low- and moderate-income housing units are most commonly part of inner city linkage programs, such as the Boston model, which ties the impact fee to downtown commercial construction rather than to residential development. While suburban communities have, on the whole, found it more advantageous to require developers to produce new units, both Lexington and Newton have required or allowed residential developers to make cash contributions in lieu of units in a number of instances.

- In Lexington, two developers have contributed cash. The developer of Potter Pond contributed \$900,000. to LexHAB in lieu of the 10 units required under the Inclusionary Housing Policy. A second developer will contribute \$400,000. and possibly 10 moderate-income rental units to meet his inclusionary requirement. The units are still the subject of negotiation.
- In Newton, the Board of Aldermen has required a few developers to contribute cash when the number of units to fulfill the 10% requirement resulted in a fraction of a unit. The Board determined the cash value for that fraction, and the developers paid the sum in addition to providing the required units. Recently, the developer of a small parcel (under 10 units) received his special permit for the residential development and met his 10% obligation through a cash contribution. The amount of the contribution was equivalent to 10% of the average sales price of one unit in the development, in this case approximately \$20,000. The cash will be donated to the NCDA for use in a subsidized housing project.

Other communities adopting an inclusionary housing program might consider the use of cash contributions in lieu of the provision of units for a number of reasons. They may have in place a mechanism for developing low- and moderate-income units themselves. Communities may choose to use the donation as a means to purchase other units within the community being developed by the private housing industry or a non-profit developer, or may choose to rehabilitate existing abandoned property. However, suburban communities, using the cash contribution option of an inclusionary housing program, should create a housing trust or other similar mechanism to ensure that all such contributions be used solely to increase the supply of affordable housing, and not diverted to other community needs.

Incentives for Developers

In the history of inclusionary housing programs communities have offered a variety of incentives to encourage developers to participate in local programs, or to mitigate the economic hardships imposed on those developers required to produce new affordable housing units. Most rely on

providing an increase in density or intensity of use; in essence, upzoning in return for the construction of affordable housing. We will discuss the ways Newton and Lexington have provided incentives to developers, examine critical issues which have surfaced in each community regarding these incentives, and briefly list a number of other incentives a community might consider. It is important to note that nearly all the incentives a community can offer to help ensure the feasibility of a development also have costs to that community, costs which must be weighed against the benefits of new affordable housing production.

Density Increases

Allowing developers to build residential units at a greater density than that allowed by local zoning regulations is the most frequently used incentive by communities with inclusionary housing programs. Generally, the housing developments are multi-family garden apartments, townhouses, or clustered single-family units. In Newton, the 10% Ordinance is invoked when a developer seeks a special permit for a density increase to build such residential units. In Lexington, developers seeking the Planning Board's advisory support for their request to rezone their parcel for higher density, multi-family residential use must comply with the Inclusionary Housing Policy requirements.



The Towers at Hammond Pond Parkway, (1976) includes 12 on-site low-income elderly units.

There are a number of costs and benefits associated with allowing density increases. Clearly, as evidenced by the program results in Newton and Lexington, granting density increases to residential developers who set aside a percentage of those units for low-/moderate-income households has been an effective way for both communities to assure the production of some housing for a more economically diverse population than is currently served by new market-rate housing construction. However, when a community grants density increases too frequently, or when the increases are too concentrated in one area, a community's ability to keep pace with the demands on its infrastructure and services can be taxed. In addition, an unsound planning policy can raise local concerns about the adverse environmental impacts of such decisions.

Alternatively, if developers can build some kind of housing at only slightly lower density than that permitted under an inclusionary housing program without including the subsidized units, their choice will be clear, and few or no units will result.

Both Lexington and Newton have found effective ways to limit the costs of density increases in their communities and to assure continued local support for the inclusionary housing programs. In Newton, developers' proposals are carefully monitored for adverse environmental impacts. Developers have been required to pay for environmental studies, provide substantial new landscaping, or preserve and restore wetlands located on their property. In Lexington, because the policy is tied to a rezoning process, the Planning Board has the opportunity to negotiate the terms of the development and thereby control the units' affordability, and town meeting members have the opportunity to examine each proposal and to accept or reject it based on what the developer agrees to provide versus what the potential costs to the community will be.

However, there is a point at which the costs of the community's demands, for housing and other exactions, may be greater than the value of the density increase being offered as an incentive, and developers will no longer find it economically feasible or desirable to participate in the program. A community's demands can especially harm small developers, who, attempting to provide more moderately-priced units, are apt to have a smaller profit margin than developers of large-scale luxury developments. A threshold exemption for such developers can be part of a community's inclusionary housing program. Clearly, the amount of density bonus a community offers, the prevailing land costs, the amount of the inclusionary requirement, and the difficulty developers face in securing necessary special permits or rezonings for their parcels, all affect the rate of developer participation and the potential success of an inclusionary housing program.

Municipally Owned Buildings and Land

Another incentive a community can offer developers is a reduction in the cost of land or buildings owned by the municipality in exchange for the donation of a certain percentage of the units in a new or converted development. At times a community can require a greater percentage of



Falls Ridge, Newton Upper Falls, (Emerson School Conversion, 1981) includes 2 on-site low-income family units and 1 on-site low-income elderly unit.

units by reducing the cost of the land or buildings below the market value. As we have discussed previously, both Lexington and Newton have allowed developers to convert surplus school buildings to housing under their respective inclusionary housing programs. Much of Lexington's program's early success has been based on the provision of such property to participating developers.

However, the public buildings or land can only be offered by those communities which have available surplus property, and can afford to subsidize locally the construction of the low- and/or moderate-income units through the reuse of their land or buildings. Also, the provision of surplus land for private development, in effect, competes with state public housing programs for low- income families and elderly households which have customarily used local municipal property as a development resource.

Other Incentives

Other incentives which have been used or considered by MAPC member communities, reported in the research, or requested by developers include:

- Designating a single source of expertise for frequent contact to explain the program to potential participating developers, coordinate the various agencies involved, and oversee the process until the units are completed and occupied.
- Expediting the processing of applications for developers participating in the local inclusionary housing program.
- Coordinating the different agencies involved in granting special permits.
- Sharing the costs of public improvements with developers participating in the inclusionary housing program; for example, street improvements and sewer and utility hookups.
- Waiving or reducing permit fees.

Providing flexibility in site planning.

- Providing professional assistance in better site planning or impact evaluation to reduce developers' costs as well as insure an effective process.
- Securing state funding to purchase the new or rehabilitated units from the developers.

Based on local resources, communities can consider any or all of the above incentives when defining their inclusionary housing program in order to make a reasonable effort to assist developers in bearing the costs associated with producing new, affordable housing units.

Ensuring Developer Compliance

Once the local ordinance or bylaw has been adopted, and proposals from developers approved or special permits granted, a community must have a process to ensure that developers honor their commitments to provide the required number, size, and type of units constructed or rehabilitated to the municipality's program specifications.

While the majority of developers in Newton and Lexington have complied with program requirements, there have been instances in Lexington and Newton where developers reneged on their agreements and/or failed to set aside units for low-income households within their residential developments.

In Lexington, two developers who received approval to rezone parcels of land for multi-family condominium developments, and who were required to set aside 10% of the units in the development for purchase by the

Lexington Housing Authority for low-income tenancy, failed to do so when the Lexington Housing Authority was unable to secure state funding to purchase the inclusionary units. Lexington negotiated with both developers. In one case, the Town received a cash contribution of \$900,000. which was equivalent to the market sales price for the 10 required units minus what the Town would have paid the developer from state or federal housing program funds. The Town purchased at a reduced cost an existing two-family units owned by the developer of the second development. Following these problems with developer compliance, the Town revised its Inclusionary Housing Policy to establish a more flexible set of requirements which now allows developers to select from a variety of options and to propose feasible means of complying with them.

Newton responded somewhat differently to its case of developer non-compliance. The City felt it important to establish clearly that once the Board of Aldermen grants a special permit for a density increase, compliance with the requirements of the 10% Ordinance is mandatory, and will not be renegotiated. The policy would imply that the City eventually intends to take the developer to court. As mentioned earlier, Newton's revisions will tighten and clarify developer requirements rather than expand options, and will give the municipality power to withhold occupancy permits from developers until the designated units have been approved and conveyed to the City.

While Newton and Lexington have revised their Ordinance and Policy continuously as they have gained more experience with their innovative inclusionary housing programs, communities now considering the adoption of such a program can profit from their experience and can take a number of steps to help assure developer compliance. The steps a community takes will depend on the requirements of their inclusionary housing program.

In cases where the municipality requires the low-income units to be built on-site at the same time as the market-rate units:

- The community should specify clearly whether units will be dispersed throughout the development, and built so they are compatible with or indistinguishable from other units within the development; and
- Local inspectors will need to monitor developers' compliance throughout the design and construction phases, and their responsibilities should be stated in the ordinance or policy.

In cases where the municipality allows the low-income units to be built off the site of the new residential development:

- Local inspectors will need to monitor the construction of these units to assure that developers meet the ordinance's specifications for quality and level of rehabilitation; and
- A community can specify that the developer build or rehabilitate the subsidized units at the same time as the construction of the market rate units.

Once construction is completed:

- A community can make the granting of occupancy permits for the market-rate units contingent on the inspector's final approval and/or the developer's conveyance of the required low- or moderate-income units to the town or city.

In cases where the municipality cannot be certain that funds to purchase the units can be secured when construction is complete:

- The municipality must have alternative plans to ensure the developers lease the units to eligible low-/moderate-income households for a specified length of time.

However, the city or town also has an obligation to the developer:

- A spokesperson for the municipality must clarify program requirements for those developers willing to participate;
- The municipality must carry out the monitoring and approval processes in a timely fashion, and notify the developer of any problems which arise in the design and construction stages;
- If the developer is required to lease the units, the city or its designated agency must maintain a list of eligible households and notify them when units become available; and
- If the developer produces units for purchase by moderate-income households, an income verification process must be completed and the financing arranged by the time units are ready for occupancy.

Procedures for the lease and sale of the new affordable units produced through the inclusionary housing program, and a full discussion of other management issues will be addressed in the next section of this report.



Chapter 4

Management and Maintenance of Affordable Housing

An inclusionary housing program often blurs, and sometimes, radically alters the traditional relationships of developers, planners and housing authority staff in the design, production, and management of affordable housing, and requires that new flexible partnerships be forged amongst them. To construct multi-family residential developments, developers become managers of low-income units often unwillingly and for the first time; planners regulate the design, acquisition and management procedures for low-income housing units, a role long held by local housing authorities; while the housing authority staff develop new strategies for managing and maintaining scattered-site, low-income units which might be located within luxury residential developments. These new units, for which the housing authority is often asked to seek state funds to purchase, are then planned and designed without the housing authority's complete control.

The preceding chapter focused on the partnership between the representatives of local community governments and private developers, a still fragile partnership where developers are granted density increases or other incentives in exchange for the production of new, affordable housing. However, the success of an inclusionary housing program relies on both the creation of housing units for low- and moderate-income households and their long-term management.

If a community establishes an inclusionary housing program which results in the production of affordable units, the community must plan how these units will be managed and maintained. If a community adopts a linkage program or accepts developers' cash contributions in lieu of affordable units, the community should create a housing trust or other similar entity

to ensure that contributions are effectively used for the sole purpose of creating affordable housing.

This chapter examines:

- Which agencies or individuals have assumed the managerial role in Newton and Lexington,
- What tasks have been their responsibility, and
- Where coordination with others involved in the inclusionary housing program was necessary.

It is important to note that a local inclusionary housing program, like any program, will generate both administrative and managerial costs which the municipality will have to bear.

Managing Agencies in Lexington and Newton

The management of new units created through the inclusionary housing program in Newton and Lexington is a coordinated effort, shared by housing authority staff, developer/owners, condominium association members, and two, newly created agencies: The Lexington Housing Assistance Board (LexHAB) and the Newton Community Development Authority (NCDA).

The need for these new entities has been due partly to difficulties both communities experienced in coordinating new, more flexible relationships among existing agencies, namely, who would bear the responsibility for design specifications and apply for funding to purchase the low-income rental units. Also, these new agencies were created to assume new responsibilities associated with the inclusionary housing program which are beyond the jurisdiction of existing agencies.

In Newton, the Newton Community Development Authority (NCDA) was created to purchase and develop property, apply for state funds to construct, rehabilitate or purchase housing for low-income households, or be the recipient of developers' cash donations provided in lieu of new housing units. Setting up a new local agency with these expanded powers required the enacting of an enabling home-rule petition by the Massachusetts General Court, and cannot be replicated without a similar act of the Legislature.

In Lexington, where the inclusionary housing program is designed to meet the needs of a more diverse population and to produce both rental and homeownership opportunities for this population, the Lexington Housing Assistance Board (LexHAB) was established to assume responsibility for a range of both development and managerial tasks. Like the NCDA, LexHAB can purchase and develop affordable housing units and receive developers'



The Regency, Newtonville, (1975) includes 3 on-site low-income family units.

contributions for this purpose. It is also responsible for managing moderate-income units, defining procedures for verifying income eligibility for available rental units and condominiums, and monitoring the resales of limited-equity condominiums. What LexHAB cannot do, is to apply for state-aided public housing funds; this must still be done by the Lexington Housing Authority.

In the early stages of Lexington's Inclusionary Housing Program, an inadequate beneficiary selection process created local controversy and LexHAB is now trying to develop an innovative process to overcome these past problems to assure the program's continued success. Among the difficult questions the Board must resolve are:

- How to establish an equitable selection process for the limited number of units targeted for moderate-income households, and
- How to balance the local need for the affordable units among town residents and local municipal employees with the need to provide housing opportunities to non-residents in compliance with Fair Housing requirements and other state and regional housing policies.

NEWTON 10% ORDINANCE

LOCATION OF ACQUIRED VS. DEVELOPER LEASED UNITS BY HOUSEHOLD TYPE

	ACQUIRED	DEVELOPER LEASED	TOTALS
FAMILY UNITS			
On-site	7	22	29
Off-site	23	7	30
<u>School site/</u> <u>Public Land</u>	5	4	9
ELDERLY UNITS			
On-site	13	26	39
Off-site	0	0	0
<u>School site</u> <u>Public Land</u>	7	0	7
TOTALS	55	59	114

Notes:

School sites and off-site locations are most frequently acquired by the City; only 20 units located on the site of new developments have been acquired by the City. All are recent (1981-86) acquisitions.

A majority of the units which developers continue to own and lease are on-site units (48).

All elderly units are located on-site in either new developments or school conversions. This may reflect the City's belief that low-income elderly households are easier to integrate into mixed-income developments than low-income families.

Until (1982), most new low-income family units were integrated only in school conversion locations where the income was not as great as in developments built as luxury condominiums. Since 1982, almost all units for family or elderly households have been located on the site of new developments.

The desire to help one's "own" is often the chief impetus for creating an inclusionary housing program. This is especially true in suburban communities, like Lexington, where the local concern frequently is focussed on open space preservation and in slowing the rate of new development. However, as LexHAB has acknowledged, the concept of trying to restrict the benefits to existing residents, their children or parents, stands on weak legal ground.

In both Lexington and Newton, the local housing authorities perform a number of managerial tasks which assure the long-term success of the programs. The Newton Housing Authority manages the low-income, public housing units, which the City acquires by purchase or developer donation. The Housing Authority staff places eligible households from its waiting list in available units. Rents collected are used to maintain the units, pay condominium fees where required, and cover the management costs. The Newton Housing Authority also provides support services to developers who

continue to own and manage units set aside for low-income households after construction is completed. The Housing Authority staff notifies all eligible Federal Section 8 Certificate holders of the availability of an apartment, and directs them to the developer/owner to lease the apartment. Developers select their own tenants, whose income eligibility has been verified; they collect rents, manage, and maintain the units. Currently, in Newton, the Housing Authority manages 55 units; developers are required to lease and maintain another 59 units for low-income households.

In Lexington, the Housing Authority, LexHAB, condominium association members, and developers all share management responsibilities. The Housing Authority now controls 9 low-income rental units; 2 are located in a two-family house owned by the Town and managed by the Authority, and 7 are located in Parker Manor, where the condominium association manages and maintains the units. An additional 26 low-income rental units in Katahdin Woods, a newly approved development, will also be used by the Housing Authority for its tenants. The condominium association at Muzzey Jr. High maintains and rents 10 units to low-income households. LexHAB owns these units and verifies household incomes. Developers, who have received approval for 2 new residential projects and one now under construction, will own and manage the additional 10 low-income rental units and 63 moderate-income rental units being developed in these projects.



Private Entryways, Muzzey Junior High School Conversion, Lexington.

Defining who is responsible for the variety of tasks related to the implementation and management of an inclusionary housing program, and how these can be successfully coordinated is still an ongoing and evolving process in Newton and Lexington.

Communities, initiating such a program in their town or city, will need to take a number of steps to assure the successful management of newly created affordable housing units. A community should:

- Identify which municipal agency(ies) have historically assumed managerial roles in housing affairs and/or have the experience to do so.
- Weigh the potential for coordination among those identified agencies.
- Involve members of these agencies in defining what new roles they could adopt to implement an inclusionary housing program and manage the resultant housing units.
- Establish ways to create a productive partnership among participants where roles overlap.
- Consider whether a new non-profit agency will be required to secure funding, define an equitable selection process for targeted income groups, verify income eligibility, manage rental units for households outside the local housing authority's jurisdiction, and/or foster strategies which will produce home ownership opportunities for low- and/or moderate-income households.
- Clearly define the management procedures for developers or condominium associations who retain ownership of units set aside for low- and/or moderate-income households, as part of the inclusionary housing program.

Preserving Affordability

Both Lexington and Newton preserve the affordability of their units produced under the 10% Ordinance and the Inclusionary Housing Policy through the use of rental and resale controls, and by instituting methods to assure the City or Town acquires more of the affordable units.

In Newton, 55 units, acquired by purchase or developer donation, will remain affordable indefinitely. However, 59 units are either still owned and managed by the developers of the property, or are under construction and acquisition monies have not yet been secured. Left in the hands of the developers, these rental units are required to be made available to

low-income households for a period of only 15 years. Recently, Newton has been seeking to preserve the affordability of these units in several ways:

- The City has made an effort to secure more state housing programs monies to purchase the units once they are completed by the developers.
- Newton's proposed ordinance revision, if adopted, would extend the developers' rental commitment to 40 years, at which time the City would have the option to purchase the unit at a fair-market value.
- The City has required developers submitting proposals to convert surplus schools or to develop public lands to provide a higher percent of affordable units in their new residential developments. (In some cases, 50% of the new units are set aside for low-income households.)

Lexington, like Newton, has learned from its early experiments that efforts to produce affordable housing units must result in the long-term preservation of their affordability. In one school, converted to affordable condominiums selling for \$40,000 to \$50,000, the Town failed to place resale restrictions in the deeds; first-time buyers received a windfall profit from the resale of the units, and the affordability of these units was permanently lost.

The Town has since devised a number of mechanisms to preserve new units' affordability. Because Lexington's Inclusionary Housing Program serves households with diverse incomes and provides both rental and homeownership opportunities, the revised Inclusionary Housing Policy now relies on a flexible negotiation process with developers in an attempt to secure permanently affordable units. Negotiated requirements have included:

- Accepting developers' cash contributions in lieu of units with which the Town can purchase or construct low- and moderate-income rental units at other sites;
- Requiring fewer units when developers donate the units to the Town;
- Offering local surplus school buildings at a nominal cost to developers in exchange for the donation of some units or the production of limited-equity condominiums for moderate-income households;
- Limiting the resale prices of affordable condominiums through deed restrictions;

30. Newton has used Ch. 705/667 monies to purchase some of their units. See Chapter 5 for more information about funding opportunities.

- Reserving the option to buy units from developers at below market rates; and
- Restricting the conversion of rental units to market rate condominiums.

To date, 19 completed low-income units are owned by the Town, LHA or LexHAB and will remain permanently affordable. Sixty-one limited-equity condominiums with deeds which limit their annual appreciation have been sold to moderate-income households. Developments recently approved or under construction will be all rental units, and will provide a mix of low, moderate, and market rate housing. Two developments, the Franklin School Conversion and Katahdin Woods will be financed by state Sharp and Teller programs. The Town has reserved the right of first option on units rented to low-income households during the financing period, once that period expires. In the case of Katahdin Woods, the developer is required to offer the 26 low-income units to the Town at 1986 rates. The Town also has first option on the other market rate units in the development, if it has a need for additional affordable housing when the financing period expires and the Town can afford to pay market rate prices at the time of the sale. Two other developments recently approved by Town Meeting, will remain rental indefinitely; a total of 35 units will be set aside for moderate-income households. To convert these units to condominiums, both developers will need the approval of a 2/3 vote at Town Meeting.



Franklin School Conversion and new residential construction, Lexington. When complete will include 10 on-site, low-income rental units and 20 on-site, moderate-income rental units.

Municipalities, in planning their inclusionary housing programs, must create the means for ensuring that new units remain affordable over time. Some options communities have used are:

For rental units,

- Secure funding to acquire the units.
- Consider incentives which might be provided to developers in exchange for the donation of units.
- Place restrictions on the land regarding the continued rental of units to low-/moderate-income households in case the developer sells the property once construction is completed.

For moderately-priced condominiums,

- Place resale restrictions in the deeds.



Chapter 5

Economics of Inclusionary Housing Programs

In planning a local inclusionary housing program, the economic aspects are important. If it is not financially feasible to develop under a local program, developers won't use the program. Programs which do not take the economic factors into consideration, are tokens, adopted in response to pressures to "do something to promote affordable housing." In this section, those aspects of program design which are critical to the feasibility of inclusionary housing developments will be discussed to assist the design of a realistic local program.

There are three considerations which are of particular importance to the economic feasibility of inclusionary developments:

- The number and type of inclusionary units required of the developer,
- The level of density bonus or other incentives to be provided to the developer who participates in the program, and
- The portion of the cost of the inclusionary units to be borne by public resources, and the portion to be absorbed by the private parties involved in the development.

The Structure of the Inclusionary Housing Program

The percentage of units and the type of affordable unit the community requires are critical factors in determining the economics of an inclusionary housing program. This issue has been thoroughly reviewed in previous sections; however, it is important to point out that all of the factors discussed here are interrelated. The greater the required percentage of affordable units, for example, the greater will have to be the density bonus or other incentive if the income of the target population remains the same. If, on the other hand, a program seeks to provide homeownership opportunities for lower-income households, without massive public subsidy, a relatively small percentage of units could be exacted.

The Density Bonus

All of the inclusionary housing programs reviewed in this report were essentially voluntary programs which relied upon incentives to encourage developer participation. In general, the most important incentive appears to be increasing the intensity of use or allowing for multi-family use in districts zoned for single family use only. This permits the development of more housing units than would normally be allowed as a matter of right under the current zoning. In this discussion, we will assume that the program being contemplated is similar.

The inclusionary housing programs in the MAPC region reviewed by this report in effect, if not by design, leave some flexibility as to the precise density a particular developer will be allowed. In Lexington, the Town Meeting votes on a rezoning with the developer's concept before them; the developer is held to his concept in his later application for a comprehensive permit.

In Newton, the density allowed under the special permit process is fixed by the zoning ordinance, but varies depending on the residential zone in which the parcel is located. In some cases, the Board of Aldermen found it necessary to change the zoning to a district which allows a greater density at the same time that it granted the special permit for multi-family development in order to make the projects feasible. In three Newton projects studied by MAPC, the resulting density increases ranged from 60% to 400% over what is allowed by right, resulting in developments from 2.5 to 20 units per acre. However, it should be noted that these same Newton developers also were required to make other concessions to the community, such as the dedication of open space, which affected the economics of the development as well.

The amount of density increase allowed by a local inclusionary housing program is critical. The assumption is that a program which does not provide a sufficient density will see available land developed according to whatever use is allowed under the local zoning outside the inclusionary program. The specific density needed will depend greatly on the local



Nahanton Woods, Newton South, (1978) includes 5 on-site, low-income elderly units.

real estate market, the number and type of inclusionary housing units required, the effect of other requirements imposed by the community, and the level of contribution by the community, if any, to the cost of the inclusionary units or the overall development. This last may include the provision of subsidy through state or federal housing programs. Thus, the specific density is likely to differ from development to development.

To understand the issue, it will be useful to consider a simple model of how a local market for land and development works. Perhaps the most important factor, at least at this time in the Boston region, is the availability and cost of land, a commodity which is becoming more difficult to locate and acquire. In its simplest form, the value of that land will depend upon the price which can be obtained for the type of units which can be developed within the constraints of the local zoning, and the cost of developing those units, including the developer's own return. With this model, the type of development allowed by the zoning which brings the greatest value for the land will be the type of development which is most often constructed.

Obviously, a zoning change which increases the intensity of use allowed on a parcel of land will usually provide a major windfall to the owner of that land by substantially increasing the price which can be obtained for it. Conversely, any bylaw change which reduces that intensity, or

"downzones," will (in theory) reduce that value. (Property owners rarely accept a decrease in value, however, but rather wait for inflation to catch up with their expectations.)³¹

In this model, over the long term, the local land market will likely adjust to the existence of the inclusionary housing program and housing values will reflect the inclusionary requirement. The land market will absorb the cost of the inclusionary units not supported by some form of public subsidy. Theoretically, one of the outcomes of this adjustment is that the inclusionary housing option becomes the "highest and best use," outcompeting other uses. The more this is the case, the less the inclusionary housing program is voluntary in the economic sense.

This model assumes a predictability exists in the process which is not entirely the case, at least in the short term. As with most special permits or other zoning or site plan review, what is specifically required of the developer beyond the inclusionary housing requirement may vary significantly from proposal to proposal. What the developer receives as an incentive may vary as well. The exact nature of the inclusionary units may fluctuate depending upon the availability of the different types of housing subsidies committed to the development, thus changing the level of write-down which must be absorbed within the development itself. Other, exactions may be imposed along with the housing requirements, which significantly alter the developer's financial calculations.

Within the short term, given the uncertainties of the process, a portion of the cost of the inclusionary units and other non-housing exactions will be absorbed by the developer out of his profits or be passed along to the buyers or renters of the market units. The latter has been the case in recent years. Because of the rapidly inflating housing market in the region, developers have systematically underestimated the potential market price for condominium or rental units, leaving a great deal of price elasticity at the end of the deal to absorb extra costs. The question is would the price have been adjusted anyway to reflect the realities of an inflated market?

A simple hypothetical example may help explain how density is important in the economics of inclusionary zoning. Stripped of the complexities found in almost every proposal, it cannot be interpreted as typical or representative, but rather as a simplified example to walk one through a basic calculation.

31. In this sense, voluntary inclusionary housing programs which allow for an increase in density basically limit the return afforded to the developer, and thus limit the amount of extra value added to the land. The land, in effect, is worth something less than if the increase in intensity was allowed without the inclusionary requirement. Looked at in a slightly different way, voluntary inclusionary housing programs recapture some of the added value to underwrite the cost of the inclusionary units.



Gazebo, Auburndale, (1983) includes 3 on-site, low-income family units.

Consider a hypothetical 400,000 square foot parcel located in a suburban community in the Boston area adequately served by municipal roads, water, and sewer. The parcel is in a single-family zone requiring 40,000 square feet per house lot. Assuming 10% of the lot must be allotted to streets, sidewalks, etc., the developer could obtain nine house lots from the site. The developer's houses in this scenario will be substantial- 2,800 square feet, at a cost of \$70 per square foot. He anticipates that each home will sell for \$320,000. His proceeds must include his 10% overhead and profit (which is actually 9% of sales income).

a. Income from sales	$(\$320,000 * 9)$	\$2,880,000
b. Construction costs	$(70 * 2,800 * 9)$	1,764,000
Soft costs	$(12,000 * 9)$	108,000
Hard costs	$(8,000 * 9)$	72,000
c. Overhead and profit	$(\text{Income} * .09)$	259,200
d. Costs plus overhead and profit		2,203,200
e. Feasible bid for land	(a-d)	676,800

The feasible bid for the land is \$72,500 per houselot, somewhat low but not totally out of line with current prices for an unimproved lot in a middle income suburban community in the Boston region. Other hard costs include site improvements, pavement, landscaping, etc.; soft costs include the cost of design, legal services, permit fees, construction financing, etc.

Assume, however, that the above developer would like to encourage the community to adopt an inclusionary housing program and use this parcel as the first example. How many units would he have to develop to make an inclusionary program feasible?

The developer proposes to develop townhouse-style condominium units, and sell 10% of the units to the Local Housing Authority for \$72,500, the maximum price which can be paid by the state Ch.705 family housing program. The developer expects to sell the remaining units on the private market for \$180,000 each. The units will be 1,400 square feet, two and one-half story, three-bedroom units. He knows that a developer of single family houses could pay around \$680,000 for the site. He must be able to offer at least \$700,000.

In this scheme, the average sales revenue per unit for each unit will be \$169,250, since for every nine units which sell for \$180,000, there will be one which sells for \$72,500.

a. Sales revenue per unit	\$169,250
b. Construction cost per unit (1,400 * 75)	105,000
Hard costs	6,000
Soft costs	8,000
c. Overhead and profit per unit	15,232
d. Construction plus overhead and profit	134,232
e. Feasible bid per unit for land	35,018

Given a feasible per unit land cost of \$34,000, he will have to be able to construct at least 21 units to outbid the single-family use of the land. This represents a density increase of approximately 133%. Two units would be sold to the housing authority.

Public Subsidies

In many inclusionary housing developments, a portion of the cost of the inclusionary housing units, or the project as a whole, is supported by some form of public subsidy to increase the number of units which can be required; protect, for a longer term, the affordability of the units; or in some other way assist the purpose of the program. It is possible to require that inclusionary units be donated outright with the total cost borne internally by the development, but that will severely limit the number of units and/or necessitate a fairly substantial density increase. The limits of the available public programs generally determine the portion of the cost which must be absorbed internally, and the number and type of units to be provided under the program. In the discussion below, the principal programs which are or could be utilized in an inclusionary housing program will be discussed. Not all will be available to every community, and a number have proven difficult to adjust to the concept of inclusionary housing.

Chapters 667/705: State-Aided Housing

In Newton, the Board of Aldermen required that a number of developers sell their inclusionary units to the Newton Community Development Authority. Funds from two related state programs, the Ch.667 elderly housing program, and the Ch.705 scattered-site family housing program, were used to finance the acquisition. Currently, the Massachusetts Executive Office of Communities and Development, the agency which administers the two programs, has placed a maximum of \$72,500 for the acquisition of single family or townhouse style units, and \$42,500 for the acquisition of multi-family units. The inclusionary developers had to absorb the difference between these maximums and the actual cost of developing the units.

Thus, the Ch.667/705 program has been used to underwrite the affordability of units within condominium developments by converting the inclusionary units to public housing. However, there are a number of difficulties in adjusting the requirements of this program. First, funds from the Ch.667/705 program are sporadic, and are not always available. A second related problem is that the funds cannot be guaranteed.

The Executive Office of Communities and Development has reservations about using Ch.667/705 to purchase inclusionary units within condominium developments where the development contains unusual amenities often associated with luxury developments. Condo fees in such developments tend to be high, and the level of the fee over time cannot be controlled by the local authority or EOCD.

In Newton, the Housing Authority worries about the impact of condominium fees on its operating costs. Tenants in Ch.667/705 units pay only 25% of their income as rent, revenue which must be used by the local authority to provide utilities, maintenance, and management.

Even with these problems, the Ch.667/705 program remains arguably the best opportunity in Massachusetts to subsidize an inclusionary housing development in a way that will protect and guarantee the long-term affordability of the units.

Section 8: Existing Housing Program

Since the early 1970's, the federal government has maintained a program which subsidized the rents of lower-income tenants within existing apartments. The Section 8 Existing Housing Program requires that the tenant pay 30% of their income towards their housing expense (rent and utilities), and the Section 8 program pays the difference between that and the rent negotiated with the landlord.

The federal program is administered by local housing authorities which apply to HUD for authorization, or by the Executive Office of Communities and Development which has a state-wide allocation from HUD. Tenants apply for the program, and when a Section 8 Certificate becomes available, either enter into the program with their existing landlord, or find another apartment and landlord willing to rent under the program. Tenants generally have two months to find an apartment, after which the Certificate is returned and given to the next applicant on the waiting list.

Today, with the tight rental housing market in the region, the percentage of unused certificates returned by applicants is high. A major contributing factor is that the maximum rents landlords may charge under the program, the so-called Fair Market Rent (FMR) levels set by HUD, have generally not kept up with the rents asked for vacant apartments.

This situation has provided an opportunity for inclusionary housing programs. Newton, as an example, requires that the developer of rental property under the inclusionary housing programs rent 10% of the units to holders of Section 8 Certificates at the FMR levels. According to local officials, if it were not for the inclusionary housing program, almost no certificate holders could be placed within the City of Newton.

The current FMR for a two-bedroom unit in the Boston area, all utilities included, is \$533 per month, probably between 50% to 75% of what a newly constructed unit would command in the City of Newton at the current market level. Thus, as with the Ch.667/705 program, the developer must still share with the municipality the cost of providing the affordable units, at least over the fifteen-year term.

The Section 8 program has seen substantial cutbacks in recent years, but new appropriations do occur, and certificates, previously awarded to local housing authorities, become available as tenants leave the program. In addition, the federal government has introduced a more loosely constructed housing voucher program more in keeping with the philosophy of the current administration, but this program has also been thinly funded.

The Commonwealth of Massachusetts has a version of the Section 8 concept known as the Ch.707 program; allocations are periodically available from that program as well.

The Community Development Block Grant Program (CDBG)

The CDBG program is a federal grant program to local municipalities which has been used to support housing rehabilitation, economic development, public improvements, and social services. Fifteen communities in the MAPC region are entitlement communities. They automatically receive an allocation of CDBG funds from the U.S. Department of Housing and Urban Development if the funds are spent on eligible activities and the community complies with other program requirements. Communities which are not entitlement must compete for CDBG funds through the Small Cities Program. In 1981, the administration of the Small Cities program was turned over to the states. The Massachusetts Small Cities Program (MSCP) is administered by the Executive Office of Communities and Development.

CDBG funds have been used by the entitlement communities to support the cost of affordable housing development on many occasions. While the regulations prohibit the use of funds to construct new housing, it is possible to use CDBG dollars for land acquisition, design, site preparation, and other non-construction costs. In Massachusetts, however, the Small Cities program has not been involved in this type of activity. One reason is that the state program and individual entitlement programs must have a majority of the funds going to activities which benefit low- and moderate-income households (households whose incomes were below 80% of the median income of the region). If a housing development supported by CDBG entitlement or MSCP funds is only 10% low- and moderate-income, then only 10% of the funds can be said to benefit those households. However, it would be possible to target the funds more precisely. For example, if a developer were providing off-site units, it would be possible to use CDBG or MSCP funds to acquire the site, underwrite design work, etc., just for those units. That would demonstrate a 100% benefit.

As with the Ch.667/705 program, however, the MSCP program is competitive, with the largest portion, the General Fund, available only once per year, making the coordination of the MSCP proposal and the inclusionary zoning proposal difficult.

Massachusetts Housing Partnership Homeownership Opportunity Program

The Commonwealth of Massachusetts has recently committed \$20 million through the Massachusetts Housing Partnership to create a program to provide homeownership opportunities to first-time homebuyers. In addition, \$5 million from the state's Community Development Action Grant (CDAG) program has been set aside to construct sewers, roads, and other infrastructure for designated projects, and \$200 million is being made available for mortgages to first-time homebuyers of units in the designated developments by the Massachusetts Housing Finance Agency.

Municipalities that participate in the program are expected to offer additional incentives that will effectively reduce the cost of the new housing or reduce the production timetable for the developer. Recommended incentives include donating sites, local financial contributions, supporting needed zoning changes, or expediting permitting processes.

Under this program, developers of single-family or condominium developments who agree to participate will be required to provide 75% of the units at a price approximately 30% below the median price of a market-rate home, and 25% of the units at a price approximately 40% below the median market price. It is anticipated that the combination of direct MHP investment in construction, the subsidization of infrastructure improvements, local incentives provided by the municipality, and guaranteed mortgages for the homebuyers will provide sufficient incentive for the development community to participate in the program.

The Massachusetts Housing Partnership anticipates underwriting the cost of approximately 2,500 units over the next two years. Communities which are contemplating an inclusionary housing program may find that the Homeownership Opportunity Program is tailored for their local conditions.

Clearly, the economic aspects of an inclusionary housing program are very important. When designing a local program, the designers must understand the local housing market and the market for land so they can design a program which provides a feasible opportunity for the developer, but does not force the community to make excessive concessions. A program which is not realistic will not be used. There are several incentive programs in the region which have been on the books for a number of years which reflect that. On the other hand, a program which produces developments completely out of harmony with the community will not long survive. The effective median may only be found by allowing some discretion by the permit-granting authority to evaluate each proposal on its merits to both encourage development and protect the community.



Conclusion

Inclusionary housing and linkage programs are clearly among the list of important tools available to local communities who wish to increase their supply of affordable housing. In this concluding section, a number of steps are recommended for local communities to consider to promote the use of these techniques beyond the limited application found today in the Boston metropolitan region and the Commonwealth.

Throughout Massachusetts local communities are engaged in a lively debate over the cost of housing and the appropriate government response. Every community should be considering inclusionary housing and linkage programs, to determine which approach or approaches are suited to local conditions. The steps outlined below provide a framework for local debate and action.

Coordinate the Local Housing Effort

A local community should identify one board or committee which will have the responsibility to review, discuss, and recommend affordable housing strategies and programs. Within communities, a large number of public and private groups and individuals are participating in the affordable housing discussion. All have an important contribution to make. Often, one group will informally take a recognized leadership role and coordinate the local housing debate. Where this has not occurred, the local discussion may suffer unless some coordinating body is recognized as having the responsibility to manage the debate surrounding affordable housing strategies and programs.

The coordinating body could be an existing board, such as the Planning Board, Housing Authority, or Fair Housing Committee, provided the board has housing or planning as its primary responsibility. It may be an ad hoc committee, set up especially for the purpose of dealing with the affordable housing question. Appointment could be by the chief elected official, or by the legislative body, provided all or most of the relevant groups are willing to recognize the appointment.

Evaluate Local Housing Needs and Conditions

Once the local housing committee has been identified, a review of the local housing environment in the community should be undertaken. This review need not be complex, but, rather, should represent a simple summary of facts needed to design a realistic local strategy. Such a review would include:

- A review of local growth trends:
What type and how much housing is currently being developed?
How much commercial development is taking place.
What is the likely impact on the demand for housing in the community?
- A housing market study:
How much does it cost to buy a house or condominium, or to rent an apartment?
Who can afford those prices, and who cannot?
How much housing is currently on the market?
- A review of local regulations:
How do local zoning, subdivision control, site plan review, and other land-use regulations effect the type of housing being developed and its cost?
- An analysis of development potential:
Is the community able or likely to absorb more residential growth, either through new construction on vacant land, or through the reuse of older, developed sites?
Is there an inventory of surplus municipal property?
- An evaluation of current local housing efforts:
What local organizations are already active in affordable housing, and how are they doing?

Prepare Proposals for Inclusionary Housing or Linkage Programs

Having evaluated the need for affordable housing and the local housing environment, the local housing committee should consider developing specific proposals for programs.

If the review has demonstrated that a potential exists for some significant amount of additional residential development, the committee would clearly wish to consider drafting a bylaw, based upon the principles outlined in this report. In general, it is advisable to work closely with the local Planning Board, since it is responsible for making recommendations on all zoning proposals. In addition, the housing committee should involve all other boards, particularly the Zoning Board of Appeals and the Housing Authority, or groups which will have a potential role in the program.

If a significant amount of commercial development is anticipated (to the degree that local housing demand may be affected), the housing committee may wish to propose a linkage program. Determining the appropriate linkage payment is critical; it should be based upon a careful study of employment and residency within existing area businesses.

In communities where an inventory of surplus municipal property is available, the housing committee could propose a development strategy based upon inclusionary housing concepts. This has occurred in Lexington, Newton, and in other communities in the region. This may be an especially useful strategy where a full-scale inclusionary housing bylaw is not currently politically realistic.

Investigate Funding Sources

Local communities should be considering all of the applicable state and federal housing programs which could be used to support inclusionary housing efforts, as well as affordable housing in general. Current programs are summarized in the previous section: The Economics of Inclusionary Housing Programs.

Organize a Local Housing Partnership

The local housing committee may decide that a local nonprofit housing entity is needed to effectively develop and preserve the affordable housing produced under the local program. To be effective, this

organization should include local officials, representatives of the private sector, and other concerned and knowledgeable citizens. The local housing partnership could process applicants, own and/or manage rental property, act as the housing trust to receive all cash payments or linkage fees, and act as an affordable housing developer, or participate in joint ventures with private developers.

Inclusionary Housing and Linkage programs are not going to solve the lack of affordable housing. However, as part of a comprehensive effort, these programs can bring the region closer to the goal of an adequate mix of housing for all of its residents. The Metropolitan Area Planning Council is eager to play its part in assisting local communities, and the Commonwealth, in achieving that goal.

Appendices

- A. Town of Lexington - 1) Inclusionary Housing Policy (March 18, 1985)
2) Inclusionary Housing Policy (December 9, 1985)
- B. City of Newton - 1) Zoning Ordinances, Sec. 30-29
2) Proposed amendments to Ordinance.
- C. Town of Reading - Zoning Bylaw Amendment
- D. Boston Redevelopment Authority - Text Amendment Applications
 - 1) Text Amendment No. 73: Development Impact Projects (December 29, 1983)
 - 2) Text Amendment No. 104: Development Impact Project Regulations-Housing (April 1986)
 - 3) Text Amendment No. 105: Development Impact Project Regulations-Job Training (April 1986)
- E. City of Cambridge - Inclusionary Housing Proposal
- F. Town of Hingham - Zoning Bylaw
- G. Town of Concord - Zoning Bylaw
- H. Town of Bedford - Zoning Bylaw
- I. Town of Southborough - Zoning Bylaw



Robert A. Bowyer
Planning Director

Planning Board Town of Lexington, Massachusetts

TOWN OFFICE BUILDING
Lexington, MA 02173
617/862-0500/Ext. 24

NOTE: Town Meeting Members are familiar with the Planning Board's policy that developers are required to include a percentage of housing units for low- and moderate-income families in a development to obtain a favorable recommendation from the Planning Board for an increase in density. That policy has been revised to broaden its scope and to include "affordable" housing, a term that is defined in the policy. The new policy is used to evaluate the three RD rezoning petitions (Articles 20-22) and the Franklin School conversion.

The inclusionary housing policy will be included in the Housing Element of the Comprehensive Plan on which the Planning Board is now working.

The Planning Board welcomes comments and suggestions on this policy.

INCLUSIONARY HOUSING POLICY

FORMER POLICY

It will be Planning Board policy in the future to request of developers seeking increased density to provide a minimum of twenty percent (20%) of the units for low and moderate income housing and that such units be transferred to the Lexington Housing Authority or other qualified agency in accordance with a standardized Memorandum of Understanding that would indicate the maximum transfer price (as allowed by HUD) for these results. (Adopted March 25, 1980)

* * * * *

NEW REVISED POLICY (Adopted March 18, 1985)

In order to obtain a favorable recommendation, or where applicable a favorable action, by the Planning Board, a proposal shall comply with the following policies:

POLICY 1.1: All new housing developments which gain an increase in density greater than that previously allowed by right in the zoning district in which it is located, shall provide affordable housing units.

Proposal for study **COMPENSATORY BENEFIT:** Where an action of the Town increases the value of a residential property, by permitting higher density for instance, or reduces an owner's or developer's expense, by granting a waiver or variance from normal standards for instance, the Town should receive a benefit, such as some type of affordable housing in return. Further, the Town should refrain from actions which

increase value, or reduce expenses unless it does receive such a benefit.

TERMINOLOGY

COMPREHENSIVE PLAN DEFINITION OF FAMILIES WITH INCOMES QUALIFYING FOR AFFORDABLE HOUSING

Very Low Income	- below 50% of Boston SMSA median income
Low Income	- 50 to 80% of Boston SMSA median income
Moderate Income	- 80 to 120% of Boston SMSA median income
Middle Income	- 120 to 150% of Boston SMSA median income

The income eligibility requirements of various state and federal programs for low- and moderate-income housing may differ from the comprehensive plan definition and may be used instead.

Example: Based on March, 1984 data which showed the median income of a family of four in the Boston metropolitan area was \$32,300, the annual incomes qualifying for affordable housing are:

Very low income:	below \$16,150
Low income:	between \$16,150 and \$25,840
Moderate income:	between \$25,840 and \$38,760
Middle income:	between \$38,760 and \$48,450 (applicable to purchase of affordable housing only)

COMPREHENSIVE PLAN DEFINITION OF "AFFORDABILITY"

Affordable Housing Units are those which may be purchased or rented by those who meet the guidelines for maximum annual income for a low-income, moderate-income, or middle-income family or household, and whose expenditure for housing costs does not exceed 30% of their gross annual income in the previous calendar year. Housing costs includes: 1) for owners - payments for principal and interest on a mortgage, real estate taxes, homeowners insurance, and condominium fees, if any, or 2) for renters - rent including heat and furnishings, if provided, but not utilities.

Example: Based on the March, 1984 data on median income for a family of four, maximum expenditure for housing costs would be:

<u>For renters:</u> (monthly contract rent)
Very low income: below \$400/mo
Low income: between \$400/mo and \$650/mo
Moderate income: between \$650/mo and \$975/mo
Middle income: not applicable

For owners: (sale price* of housing unit)

Very low income: below \$31,500

Low income: between \$31,500 and \$50,400

Moderate income: between \$50,400 and \$75,500

Middle income: between \$75,500 and \$95,000

*Based on a purchase with 10% down payment, a 30-year mortgage at 13%, annual real estate taxes at 2% of purchase price plus homeowners insurance and condominium fees.

NOTE: These examples are for illustrative purposes and are based on economic data at the time of writing. The range of maximum incomes will change as the median income for the Boston area changes. Affordability of housing for purchase is greatly influenced by changes in interest rates.

In determining affordability, the most recent data from the following sources shall be used:

Median income for the Boston metropolitan area: As calculated by the Regional Economist, Boston Office, U.S. Department of Housing and Urban Development in the "Income Limits for the Section 8 Program"

Mortgage Interest Rate:

POLICY 1.2: Through controls on rental levels or the resale value, housing units should remain affordable for an indefinite period. The rental levels or resale value should be determined primarily by the ability to rent or purchase of target income groups and only secondarily related to indices of inflation. (In no event shall a seller be required to accept a sale price less than his/her original acquisition price plus an annual allowance for appreciation of value equal to the increase in the Consumer Price Index for the Boston area or 4 per cent, whichever is less.

Comment: The Town must monitor sales and rentals: 1) to insure the acquisition price or rent levels of housing units remain affordable to target income groups, and 2) to avoid windfall profits to subsequent occupants if inclusionary units (which are produced by some form of public assistance) were to be sold at then prevailing market rates.

POLICY 1.3: A developer may use one of several alternatives for providing affordable housing units on or off the site, as follows:

<u>% of all units</u>	<u>Type of units provided</u>
* 5%	Low-income units donated (by gift) to the Lexington Housing Authority; or
* 15%	Low-income units purchased by L.H.A. at HUD allowable cost for Boston metropolitan area; or

- * 25% Moderate income units to be purchased or rented by eligible households.
- * 40% Middle income units to be purchased or rented by eligible households; or

After efforts to provide the type of housing units indicated above have proven fruitless, a developer may do the following:

- * 100% Units not provided directly; financial contribution made to LEXHAB or L.H.A. in lieu of providing units equal to 3% of sales price of all units.
- * At this writing, these are preliminary targets, subject to change based on additional analysis.

POLICY 1.4: PREFERENCE FOR FAMILY UNITS: Every effort shall be made to provide housing units for low-, moderate-, or middle-income families, rather than housing units for senior citizens.

Comment: The Town has fallen far short of meeting the targets set by the 1979 Town Meeting for the provision of family type units while being much closer to the target for housing units for senior citizens.

POLICY 1.5: ALTERNATE LOCATION OF AFFORDABLE DWELLING UNITS: Some or all of the affordable dwelling units may be located on land other than the development tract if the affordable dwelling units are newly created. The affordable dwelling units may be located in an existing structure provided their construction constitutes a net increase in the number of dwelling units in the structure.

POLICY 1.6: TIMING OF CONSTRUCTION: Building permits should not be issued for the construction of any dwelling unit in the second 50% of the market rate dwelling units, which are linked to affordable dwelling units, whether on the same site or elsewhere in town, until construction has begun on ALL the affordable dwelling units.

POLICY 1.7: COMMITMENTS TO SPECIFIC PLANS: In the case of a petition for rezoning with an RD district, the developer shall submit plans for showing the number of affordable housing units, their approximate sales price or rent level and the method of financing in the preliminary site development and use plan. The developer may also indicate alternate methods of providing affordable housing units in the event the principal proposed method is not successful.

At the stage of the application to the Special Permit Granting Authority, which occurs after Town Meeting rezoning, the developer should submit specific data on sales prices or rent levels or affordable dwelling units, a calculation of affordability based on current economic data, all of which should be incorporated in the special permit. Where the affordable dwelling units are to be constructed under a federal or state subsidy program, a letter of commitment from the subsidizing agency should be included.

POLICY 1.8: When located in the same development with market-rate housing units, inclusionary units should be compatible with, and as nearly indistinguishable from, the market-rate units in terms of exterior appearance, and desirably, dispersed throughout the development.

Comment: In all likelihood, affordable housing units will be smaller in square feet and have fewer features than market rate units even with the same number of bedrooms.

POLICY 1.9: **TOWN ROLE:** The Town should join in an active partnership with a developer to assist in the provision of affordable housing.

The Town should:

Proposals For Study

- a. act as a central monitoring agency for compliance with conditions for providing affordable housing and insuring continuing affordability.
- b. provide accelerated processing of applications
- c. provide flexibility in site planning
- d. provide density bonuses for inclusionary housing
- e. adjust the timing of scheduled public improvements, such as streets or utilities, to make potential sites usable or to share costs.
- f. assist in obtaining state or federal financial assistance
- g. maintain a pool of prospective income qualified buyers or renters.
- h. use its financial resources to aid in the construction of affordable housing
- i. use its property resources to aid in the construction of affordable housing
- j. use its investment resources to aid Town employees to live in Lexington

Comment: Fewer than ten of the nearly 900 employees of the Town and the School Department have salaries that are above the maximum for a middle income family.



Planning Board
Town of Lexington, Massachusetts

Robert A. Bowyer
Planning Director

TOWN OFFICE BUILDING
Lexington, MA 02173
617/862-0500/Ext 424

INCLUSIONARY HOUSING POLICY

EXTRACTS FROM HOUSING ELEMENT OF COMPREHENSIVE PLAN (Approved December 9, 1985)

Inclusionary Housing:

POLICY 4.10 : In order to obtain a favorable recommendation, or where applicable, a favorable action, by the Planning Board, all new housing developments which gain an increase in density greater than that previously allowed by right in the zoning district in which it is located, shall provide affordable housing units, and shall comply with the policies in this plan.

Comment: **COMPENSATORY BENEFIT:** Where an action of the Town increases the value of a residential property, by permitting higher density for instance, or reduces an owner's or developer's expense, by granting a waiver or variance from normal standards for instance, the Town should receive a benefit, such as some type of affordable housing in return. Further, the Town should refrain from actions which increase value, or reduce expenses unless it does receive such a benefit.

POLICY 4.11 : Through controls on rental levels or the resale value, housing units should remain affordable for an indefinite period. The rental levels or resale value should be determined primarily by the ability to rent or purchase of target income groups and only secondarily related to indices of inflation.

Comment: The Town must monitor sales and rentals: 1) to insure the acquisition price or rent levels of housing units remain affordable to target income groups, and 2) to avoid windfall profits to subsequent occupants if inclusionary units (which are produced by some form of public assistance) were to be sold at then prevailing market rates.

FOR STUDY: The maximum annual increase allowed for the conversion of the Muzzey School was a sale price less than the original acquisition price plus an annual allowance for appreciation of value equal to the increase in the Consumer Price Index for the Boston area or 4 per cent, whichever is less. Other methods of calculating the maximum annual increase in value should be analyzed. Some other indices might be: the annual increase in the wage component of the Consumer Price Index for the Boston metropolitan area, the percentage increase in the median income for families in the Boston metropolitan area, the increase in the buyer's initial cash investment (not the resale value of the housing unit) in an alternative form of investment, such as a long term certificate of deposit.

POLICY 4.12 : A developer may use one of several alternatives for providing affordable housing units on or off the site. The following four alternatives are considered equivalent; no priority among them is implied by the listing.

<u>% of all units</u>	<u>Type of units provided</u>
5%	Low-income units donated (by gift) to the Lexington Housing Authority; or
15%	Low-income units purchased by L.H.A. at HUD allowable cost for Boston metropolitan area; or
25%	Moderate income units to be purchased or rented by eligible households; or
40%	Middle income units to be purchased by eligible households (Note: does not apply to rental units); or

After efforts to provide the type of housing units indicated above have proven fruitless, a developer may request that the Town allow the following:

100%	Units not provided directly; financial contribution made to LEXHAB or L.H.A. in lieu of providing units equal to 3% of sales price of all units.
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POLICY 4.13 : PREFERENCE FOR FAMILY UNITS: Every effort shall be made to provide housing units for low-, moderate-, or middle-income families.

Comment: The Town has fallen far short of meeting the targets set by the 1979 Town Meeting for the provision of family type units (target= 174, built = 27) while being much closer to the target for housing units for senior citizens (238 vs. 209).

POLICY 4.14 : ALTERNATE LOCATION OF AFFORDABLE DWELLING UNITS: Some or all of the affordable dwelling units may be located on land other than the development tract if the affordable dwelling units are newly created and acceptable to the Town. The affordable dwelling units may be located in an existing structure provided their construction constitutes a net increase in the number of dwelling units in the structure.

POLICY 4.15 : TIMING OF CONSTRUCTION: Building permits should not be issued for the construction of any dwelling unit in the second 50% of the market rate dwelling units, which are linked to affordable dwelling units, whether on the same site or elsewhere in town, until construction has begun on ALL the affordable dwelling units.

POLICY 4.16 : COMMITMENTS TO SPECIFIC PLANS: At the initial concept plan stage, the developer shall submit plans showing the number of affordable housing units, their approximate sales price or rent level and the method of financing in the preliminary site development and use plan. The developer may also indicate alternate methods of providing affordable housing units in the event the principal proposed method is not successful.

At the stage of the application to the Special Permit Granting Authority, which occurs after Town Meeting rezoning, the developer should submit specific data on sales prices or rent levels of affordable dwelling units, a calculation of affordability based on current economic data, all of which should be incorporated in the special permit. Where the affordable dwelling units are to be constructed under a federal or state subsidy program, a letter of commitment from the subsidizing agency should be included.

POLICY 4.17 : LOCATION, APPEARANCE: When located in the same development with market-rate housing units, inclusionary units should be compatible with, and as nearly indistinguishable from, the market-rate units in terms of exterior appearance, and dispersed throughout the development.

Comment: In all likelihood, affordable housing units will be smaller in square feet and have fewer features than market rate units even with the same number of bedrooms.

Terminology

COMPREHENSIVE PLAN DEFINITION OF HOUSEHOLDS WITH INCOMES QUALIFYING FOR AFFORDABLE HOUSING

Very Low Income	-	below 50% of Boston SMSA median income
Low Income	-	50 to 80% of Boston SMSA median income
Moderate Income	-	80 to 120% of Boston SMSA median income
Middle Income	-	120 to 150% of Boston SMSA median income

The examples below are based on economic data at the time of writing. The range of maximum incomes will change each year as the change in the median income for the Boston area is reported. The policy will be adjusted automatically as new data for median income is reported.

In determining qualifying incomes, the most recent data from the following source shall be used:

Median income for the Boston metropolitan area: As calculated by the Regional Economist, Boston Office, U.S. Department of Housing and Urban Development.

The income eligibility requirements of various state and federal programs for low- and moderate-income housing may differ from the comprehensive plan definition and may be used instead.

Example: Based on 1985 data on the median incomes of families in the Boston metropolitan area, the annual incomes qualifying for affordable housing in Lexington are:

	One Person Family	Two Person Family	Three Person Family	Four Person Family	Six Person Family
Boston SMSA Median Income	\$23,800	\$27,200	\$30,600	\$34,000	\$38,250
Very low income: below	\$11,900	\$13,600	\$15,300	\$17,000	\$19,125
Low income: below	\$19,040	\$21,760	\$24,480	\$27,200	\$30,600
Moderate income: below	\$28,560	\$32,640	\$36,720	\$40,800	\$45,900
Middle income: below	\$35,700	\$40,800	\$45,900	\$51,000	\$57,375

COMPREHENSIVE PLAN DEFINITION OF "AFFORDABILITY"

Affordable Housing Units are those which may be purchased or rented by those who meet the guidelines for maximum annual income for a low-income, moderate-income, or middle-income family or household, and whose expenditure for housing costs does not exceed 30% of the gross annual income of an owner and 28% of the gross annual income of a renter in the previous calendar year. Housing costs includes: 1) for owners - payments for principal and interest on a mortgage, real estate taxes, and condominium fees, if any, or 2) for renters - rent including furnishings, if provided, but not heat or utilities.

Affordability of housing for purchase is greatly influenced by changes in interest rates and the length of the mortgage. In determining mortgage costs, the most recent data from the following source shall be used:

Mortgage Interest Rate: Survey of mortgage rates of area lending institutions for fixed rate mortgages, as published monthly by The Boston Globe.

Example: Based on the 1985 data on median income, maximum expenditure for housing costs would be:

(Adjustments must be made depending on the number of persons in the household)

	One Person Family	Two Person Family	Three Person Family	Four Person Family
<u>For renters: (monthly rent)</u>				
Very low income: below	\$275	\$317	\$357	\$396
Low income: below	\$445	\$507	\$570	\$634
Moderate income: below	\$665	\$760	\$855	\$950
Middle income: not applicable to renters				

	One Person Family	Two Person Family	Three Person Family	Four Person Family
<u>For owners: (sale price* of housing unit)</u>				
Very low income:	below \$23,200	\$26,500	\$29,800	\$37,300
Low income:	below \$37,200	\$42,430	\$47,700	\$53,000
Moderate income:	below \$55,700	\$63,650	\$71,600	\$89,500
Middle income:	below \$69,600	\$79,500	\$89,500	\$99,500

*Based on a purchase with 10% down payment, a 30-year mortgage at 13%, annual real estate taxes at 2% of purchase price plus condominium fees, if any.

In the case of retired persons, with limited annual income, an equivalent housing expense should be computed. When monthly charges, which may include other items such as meals, insurance, medical care and other support services, are assessed, the housing component of those charges should be identified. When an "endowment" or other escrow or investment accounts are required, for the purposes of this policy, that shall be considered to be equivalent to the sale price of a unit; a projected investment income from the "endowment" shall be calculated, based on the prevailing rate of return for a long term certificate of deposit, and that (lost) income shall be considered to be a housing cost.

OTHER POLICIES APPLICABLE TO HOUSING AFFORDABILITY AND DIVERSITY

2. DIVERSITY OBJECTIVE:

Encourage greater diversity of housing opportunities in Lexington to meet the needs of a changing and diversified population with respect to age groups, number of persons in a household, and income.

Types of housing units by age of occupants, size of household

Context: Lexington now has a mismatch between its housing characteristics and its demographic characteristics. According to the 1980 Census, Lexington had the highest percentage (89%) of single-family homes of any of the adjoining towns and cities, the lowest percentage (14%) of rental units in the housing stock, and a relatively high number of rooms per housing units (6.9). In contrast, the 1980 Census showed the shift away from families with children. Only 23% of the housing units had any school-aged children; 44% of the housing units were occupied by two people or less and 64% were occupied by three people or less. The median age of the population is one of the highest in the area.

The mismatch between the size of the housing units and the size of households presents a dilemma. Many of the people who live in small households want to continue to live in Lexington, but there are very few housing units suitable for smaller households in the town.

POLICY 2.1 : Provide greater choice in the type of housing units available to correspond to the varying needs of town residents in different stages of their life cycle. Encourage more units other than large single-family houses, less expensive units, more rental units and more accommodations specifically designed for senior citizens.

Type of housing units by size, type of structure

POLICY 2.2 : Encourage a greater diversity in the type of residential structures at different price levels, by permitting more two-family houses, town houses, apartment buildings and buildings specifically designed for senior citizens, each sited and designed to be compatible with nearby single-family homes, if any.

POLICY 2.3 : Encourage housing units suitable for small households (condominium units, apartments, congregate housing units, accessory apartments in large, single family homes, and units suitable for single-parent households).

POLICY 2.4: Encourage opportunities for shared living arrangements for the elderly and handicapped.

Types of housing unit by tenure

POLICY 2.5 : Increase the number of housing units (apartments, congregate housing units) available for rental, in other than single-family houses.

POLICY 2.6 : Maintain at least the present number of multiple-family rental units while working to increase the overall supply of rental housing.

CITY OF NEWTON



ZONING ORDINANCES

Revised Through June 20, 1983

with attachments Through June 19, 1984

ARTICLE VIII. SPECIAL PERMITS

Sec. 30-29. Exceptions to use regulations in certain districts; permit required and procedure for granting.

(a) When, in its judgement, the public convenience and welfare will be substantially served, the board of aldermen may, on petition, and subject to such appropriate conditions and safeguards as it may impose, which may include provisions for yearly renewals and revocation at the pleasure of the board of aldermen, allow exceptions to the application of the district regulations established in this chapter, in harmony with their general intent and purpose, to:

- (1) Permit the erection of service buildings and greenhouses in cemeteries (section 30-3).
- (2) Permit certain uses of buildings or land in single residence districts (section 30-5).
- (3) Permit certain uses of buildings or land in private residence and residence D, E and F districts (section 30-6(b), (c), (d), (e), (h) and 30-7(b)).
- (4) Permit certain uses of buildings or land in business and manufacturing districts (sections 30-8(b), 30-9(b), 30-10(b) and (c), 30-11(d) and 30-12(c)).
- (5) Permit parking facilities in certain locations, as specified in section 30-21(f).
- (6) Permit certain other special exceptions as specified in sections 30-7, 30-10(c), 30-13(b), (c) and (e), 30-15, 30-21(m), 30-25(1) and 30-26(b).
- (7) Permit certain uses of buildings or land in floodplain/watershed areas as specified in section 30-20(b).
- (8) Permit the erection, display and maintaining of billboards, signs or other advertising devices within unzoned districts, as specified in section 30-25(g).
- (9) Permit the siting of an institution conducting Recombinant DNA research or technology in accordance with the provisions of Section 12, Art. III, as specified in Sections 30-11(d)(8) and 30-12(b)(11).

(b)(1) Whenever a request under this section for a special permit from the board of aldermen seeks to increase the density of residential development for apartment houses, apartment hotels, garden apartments or attached dwellings to a level greater than that allowable as a matter of right (i) pursuant to a subdivision plan prepared in conformity with the rules and regulations of the

NEWTON CODE ARTICLE VIII. SPECIAL PERMITS CONTINUED

Newton planning board acting as a board of survey, and (ii) under the zoning classification for the subject parcel existing at the time of the request and (iii) without the grant of any special permit or variance, the board of aldermen shall require as a condition of any such grant of a permit, the provision, within the development, of low-income family and/or elderly housing units amounting to ten (10) per cent of the development's total number of dwelling units.

(2) The board of aldermen may require, as a condition of said permit that, in lieu of all or some of the units for use by low income families and/or elderly being provided within the development, the developer shall:

- a. Make a cash payment to be used for low income family and/or elderly housing, which payment, as determined by the board of aldermen using accepted valuation methods, is the equivalent in value to the units which otherwise would have been provided within the development.
- b. Provide all or some of the required low income family and/or elderly housing on a site different from the development;
- c. Provide all or some of the required low income family and/or elderly housing through an alternative means other than those already listed in this subsection; or
- d. Provide all or some of the required low income family and/or elderly housing through a combination of any or all of the methods in this subsection.

If the board of aldermen allows the provision of some or all of the low income family and/or elderly housing by a method different from paragraph (b)(1) of this subsection, the board of aldermen shall first find that such alternative method will help alleviate the undue concentration of population and encourage housing for persons of all income levels; and will (a) encourage the most appropriate use of land and buildings, or (b) avoid undue hardship to land and buildings.

(c) Persons desiring to obtain a special permit from the board of aldermen for any purpose for which a special permit is required under this chapter or desiring to obtain site-plan approval in accordance with section 30-24 shall make application therefor in writing. The applicant shall also file a copy of the application with city clerk forthwith. The board of aldermen, or a committee thereof, shall within sixty-five (65) days of the filing of an application with it, hold a public hearing on the application; notice of the hearing shall be given as required by section eleven (11) of Chapter 40A. The board of aldermen shall also, pursuant to its rules relative to the issuance of such special permits or site-plan approvals, require the applicant to file such plans and information as it shall deem necessary; a copy of such rules shall be

kept on file in the office of the city clerk. The board of aldermen may attach such conditions and limitations of time to a special permit granted under this section as may be necessary to protect the neighborhood in which lies the property to which the permission relates. The rights under any special permit granted under this section shall be substantially exercised within such period of time as may be specified by the board of aldermen in granting such permit, or, if no period is so specified, within six (6) months, or such permit shall be null and void.

The board of aldermen may extend the period of time granted under this section, whether or not such period of time shall have expired, without the necessity of a further public hearing thereon, unless the board or its committee on land use shall vote to require a public hearing.

Notwithstanding the above; no extensions shall be granted which shall extend the time for substantial exercise of the grant for more than two (2) years from the date of the grant of the requested relief. Any person making application to the board of aldermen under this section shall pay to the city clerk at the time of filing of such application with said city clerk the fee prescribed by section 17-9.

- (d) The Newton Biohazards Committee shall serve as an advisory body to the board of aldermen with regard to any application for a special permit filed pursuant to paragraph (a)(9) of this section. The Biohazards Committee shall be consulted by the board of aldermen for its recommendations on the siting of any institution intending to conduct Recombinant DNA research or technology, which recommendations shall be in writing and within a time specified by the board of aldermen.
- (e) A special permit from the board of aldermen for any purpose for which a permit is required under this chapter shall be granted only by two-thirds vote of all the board of aldermen, except as herein before provided.
(Rev. Ords. 1973, SS 24-29; Ord. No. 31, Pt. IV, 12-2-74; Ord. No. 51, Pt. 11, 2-3-75; Ord. No. 202, Pt. III(L), 3-21-77; Ord. No. 212, 5-2-77; Ord. No. 272, Pt. IV, 5-15-78; Ord. No. 284, Pts. X, XIV, 6-19-78; Ord. No. R-238, 3-15-82; Ord. No. R-259, 8-9-82)

Amendment to Section 30-29
Newton Zoning Ordinances

DELETE Section 30-29(b)(1) and (b)(2) in their entirety.

ADD in place thereof the following paragraphs:

(b)(1) Whenever a request under this section for a special permit from the Board of Aldermen seeks to increase the density of residential development for apartment houses, hotels, garden apartments, or attached dwellings to a level greater than that allowable as a matter of right (i) pursuant to a subdivision plan prepared in conformity with the rules and regulations of the Newton Planning Board acting as a board of survey, and (ii) under the zoning classification for the subject parcel existing at the time of the request and (iii) without the grant of any special permit or variance, the Board of Aldermen shall require as a condition of any such grant of a permit, the provision on site and within the development, of low income family and/or elderly housing units equal to either (a), ten (10%) percent of the development's total number of dwelling units, or (b) twenty (20%) percent of the number of dwelling units in the development in excess of the number allowable as a matter of right. The determination as to which option, (a) or (b) above, applies shall be made by the Board of Aldermen at the time it renders its decision on the special permit application. The low income units to be provided shall be equivalent in size, quality, and characteristics to the other units within the development. The distribution of unit sizes and determination of occupancy characteristics (i.e. elderly or family) shall be made by the Board of Aldermen at the time of granting the special permits. Alternatively, the developer may, with the approval of the Board of Aldermen, as a condition of any such grant of a special permit, meet the foregoing low income housing requirements by the provision of off-site units within the same ward at a location or locations owned by, or under option to purchase by the petitioner and identified prior to the granting of and included as a condition of the special permit. Said low income family and/or elderly housing shall be equal to 20% of the requested development's total number of dwelling units. A minimum of one of the units provided by means of this alternative shall have at least three bedrooms.

(2) Whenever the Board of Aldermen authorizes the provision of off-site housing units in accordance with paragraph (b)(1), each housing unit provided by the petitioner shall have a fair market value, at the time of conveyance or provision to the City which is not less than the median assessed value of a single family residential home within the City of Newton as determined by the Board of Assessors for the most recent fiscal year. The petitioner shall certify and demonstrate the fair market value of each off-site unit to the Director of Planning and Development by way of an appraisal conducted by a qualified real property appraiser chosen by said director and paid for by the petitioner.

(3) Whenever the Board of Aldermen authorizes provision of off-site housing units in accordance with paragraph (b)(1), and the petitioner offers existing, rehabilitated or substantially rebuilt housing units to the City, he or she shall certify and demonstrate to the Director of Planning and Development that at the time of the developer's acquisition none of these units had been occupied at any time during the preceding twenty-four months.

(4) Any unit to be provided shall be offered for sale to the City of Newton, or the appropriate municipal agency, at a price to be established by the funding source. Should no outside funding be available, the City at its option, may choose to appropriate the necessary funds. Should there be no funding resource, and should the City choose not to appropriate any funds, the developer shall make all units available for lease through the Newton Housing Authority to eligible tenants under any State or Federal rent subsidy program which might be applicable for a period of forty (40) years as specified below. The City shall have the right to purchase all such units on the expiration of the 40 year agreement at a price equal to the fair market value of said unit as established by an independent appraiser payed for by the property owner, selected by the Director of Planning and Development. Should there be no rent subsidy program, the developer or his/her designee shall select tenants from the Newton Housing Authority waiting lists and may not charge, as rent, an amount exceeding 30% of the tenant's gross income. Should the Newton Housing Authority not have a waiting list or any eligible tenants, the landlord shall annually certify that the income of the low income tenants does not exceed eight (80%) percent of the median family income for Metropolitan Boston.

The deeds to units conveyed to the City of Newton or its designated municipal agency shall provide good and clear record and marketable title, free from mortgages and any taxes, betterments, city services fees or similar financial encumbrances then due and owing. Such units shall be conveyed prior to the issuance of occupancy permits for more than twenty-five (25%) percent of the project's total number of units. In the event that all housing units in a development, other than one owner occupied unit, are to be rental units, the housing units required shall be provided to the City of Newton under an agreement for a term of forty (40) years (in 8, five year increments which are automatically renewable). The agreement will be recorded in the Registry of Deeds as a municipal lien running with the property for its entire term. Should any rental development be converted to cooperative or condominium ownership the City shall be given an option to purchase its units. If the City does not acquire the units, the obligation for the remaining term of the original forty (40) year agreement shall continue.

(5) In the case of a development of ten or fewer dwelling units or a development sponsored and operated by a non profit or charitable organization, the Board of Aldermen, may, in its discretion, modify the requirements of (b)(1),(b)(2) to avoid economic hardships. Such modification shall be limited to a reduction in the number of housing units to be provided to the City of Newton, acceptance of a cash payment to be used for the development of low-income family or elderly housing or a combination of these alternatives.

- (6) In determining the number of units to be provided in accordance with paragraphs (b)(1)-(5) above, a fractional unit of .5 or more shall be regarded as a whole unit. When less than a .5 unit is required, the developer may satisfy his/her obligation by making a cash payment
- (7) A development project may not be segmented to take advantage of the provisions or alternatives set forth in paragraphs (b)(1)-(b)(6), nor may a developer or petitioner divide or subdivide property or establish surrogate or subsidiary business entities to take advantage of these alternatives.



TOWN CLERK
READING, MASSACHUSETTS 01867



MUNICIPAL
BUILDING
617-942-0500

ANNUAL TOWN MEETING

April 18, 1985

Lawrence Drew
Town Clerk

ARTICLE 14: The following motion by Nils L. Nordberg, as amended by Carl H. Amon, Jr. and Richard S. Dempster, was voted in the affirmative by a vote of 113 in the affirmative and 0 in the negative:

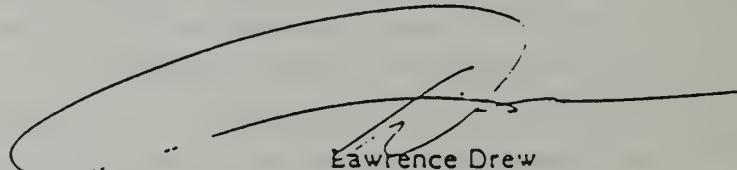
4.6.4. Low, Moderate Income or Elderly Housing: If the Reading Housing Authority specifically determines that there is a shortage of low or moderate income housing or elderly housing in the Town, then the Board of Appeals shall impose a general condition in a special permit issued under Section 4.6.1 that up to ten percent (10%) of the total townhouses within the townhouse parcel be restricted for low or moderate income housing, or elderly housing or that the applicant shall provide a like number of such housing units elsewhere in the Town (subject to the restrictions described below) or that the applicant shall provide an alternative cash contribution (calculated as described below) to the Reading Housing Authority; such funds to be used to provide low or moderate housing or elderly housing. It shall be the Reading Housing Authority's option whether to require the applicant to provide housing or the alternative cash contribution or a combination of some housing and some alternative cash contribution. It shall be the Reading Housing Authority's option whether to require that such housing be on the townhouse parcel or elsewhere within the Town. Nevertheless, the Board of Appeals shall not impose in the special permit any requirement of providing low or moderate income housing or elderly housing or a cash contribution if at the time of the filing of the application for the townhouse special permit, there then exists in the Town low or moderate income housing (as defined pursuant to Mass. General Laws Chapter 40B, Section 20), which is in excess of ten percent (10%) of the housing units reported in the latest decennial census of the Town or on sites comprising one and one-half percent or more on the total land area zoned for residential, commercial or industrial use in the town; provided, however, that the land area owned by the United States, the Commonwealth of Massachusetts or any political subdivision thereof, the Metropolitan District Commission or any public authority shall be excluded from the total land area referred to above when making such determination.

If such low or moderate income housing or elderly housing is to be located elsewhere within the Town, such units need not be townhouse in design, but such units must be upgraded by the applicant to conform completely with the then standards of the State Building Code and other regulations which may be imposed by the Reading Housing Authority.

If the Reading Housing Authority elects to require the alternative cash contribution, such contribution shall be calculated by multiplying Two Thousand Dollars times the number of townhouse units within the townhouse parcel times a fraction, the numerator of which shall be the Consumer Price Index (Boston -All Index) published by the United States Department of Labor most recently published prior to the submission of the application for a Special Permit under Section 4.6.2. and the denominator of which shall be the Consumer Price Index most recently published prior to January 1, 1985. In no event shall the alternative cash contribution be less than Two Thousand Dollars per townhouse unit. If for any reason the United States Department of Labor should discontinue the Consumer Price Index or if there should be a significant change in the calculation of the Consumer Price Index, then an alternative equitable but comparable method of calculation shall be utilized. If the Reading Housing Authority elects to require the applicant to make a combination of some alternative cash contribution and to provide some housing, the amount of the alternative cash contribution shall be adjusted appropriately.

The low or moderate housing or elderly housing units shall be designated or the alternative cash contribution made, prior to the time when occupancy permits are issued for each phase of development on the townhouse parcel.

A true copy. Attest:



Lawrence Drew
Town Clerk

Text Amendment Application No. 97
Boston Redevelopment Authority
Development Impact Project
Regulations

TEXT AMENDMENT NO. 73
THE COMMONWEALTH OF MASSACHUSETTS
CITY OF BOSTON
IN ZONING COMMISSION

EFFECTIVE
December 29, 1983†

The Zoning Commission of the City of Boston, acting under Chapter 665 of the Acts of 1956 as amended, after due report, notice and hearing, does hereby amend the Boston Zoning Code as follows:

A. By inserting, below Article 25 of said Code, the following article:

ARTICLE 26

DEVELOPMENT IMPACT PROJECTS

SECTION 26-1. Statement of Purpose. The purpose of this article is to promote the public health, safety, convenience and welfare; to prevent over-crowding and deterioration of existing housing; to preserve and increase the City's housing amenities; to facilitate the adequate provision of the public requirement for low and moderate income housing; and to establish a balance between new, large-scale real estate development and the low and moderate income housing needs of the City of Boston, by provisions designed to:

1. Afford review and to regulate large-scale real estate development projects which create new jobs and attract new workers to the City of Boston.
2. Increase the availability of low and moderate income housing by requiring developers, as a condition of the grant of deviations from the Zoning Code or the grant of an amendment to the Zoning Map, to make a development impact payment to the Neighborhood Housing Trust or to contribute to the creation of low and moderate income housing.

SECTION 26-2. Definitions.

1. "Development Impact Project", any development in the City of Boston in which it is proposed to erect a building or structure having a gross floor area (exclusive of all accessory parking garage space) in excess of one hundred thousand (100,000) square feet, or to enlarge or extend a building or structure so as to increase its gross floor area (exclusive of all accessory parking garage space) by more than one hundred thousand (100,000) square feet or to substantially rehabilitate a building or structure having, or to

†Date of public notice: December 1, 1983 (see St. 1956, c. 665, s. 5).

have, after rehabilitation, a gross floor area (exclusive of all accessory parking garage space) of more than one hundred thousand (100,000) square feet; which building or structure is intended for a use for which the use item number is listed in Table C, Section 26-3, or, for a use for which the use item number is not listed if such building project will directly result in a reduction in the supply of low and moderate income dwelling units; and which development requires a variance, conditional use permit, exception or zoning map or text amendment.

2. "Development Impact Project Plan", a plan for a development which qualifies as a Development Impact Project. The Plan shall set forth the proposed location and appearance of structures, open spaces and landscaping, proposed uses of the building or buildings, densities, projected number of employees, proposed traffic circulation, parking and loading facilities, access to public transportation, proposed dimensions of structures, and may include proposed building elevations, schematic layout drawings and exterior building materials, and such other matters as the Boston Redevelopment Authority deems appropriate to its consideration of the proposed construction.
3. "Development Impact Project Exaction", the payment of a sum of money by the Project applicant, which rate of payment is set forth in Section 26-3(2), below, to the Neighborhood Housing Trust (the Housing Payment Exaction) or the creation, by the Project applicant, of housing units (the Housing Creation Exaction).
 - (a) The Housing Payment Exaction shall be made to the Neighborhood Housing Trust in twelve (12) equal, annual installments, the first installment due upon the issuance of a certificate of occupancy for the Project building or twenty-four (24) months after the granting of the building permit, whichever comes first. The remaining eleven (11) payments shall be due and payable annually on the anniversary of the first payment. However, if said Neighborhood Housing Trust has not been created at the time any such Housing Payment Exaction becomes due, the Project applicant shall make the payment to the Boston Redevelopment Authority. The Boston Redevelopment Authority shall place any payments received, on account of the Housing Payment Exaction requirement in an escrow account, to be held therein for the benefit of the Trust, until such time as the Neighborhood Housing Trust is created. Any payments made by the Project applicant to the Neighborhood Housing Trust, on account of the Housing Payment Exaction requirement, shall be credited against any amounts due to said Trust on account of any neighborhood impact excise which may be assessed by the City of Boston.
 - (b) The Housing Creation Exaction requirement shall be met by contributing to the creation of housing units, for occupancy exclusively by low and moderate income residents of the City, at a cost at least equal to the amount of the appropriate

Housing Payment Exaction, and in conformity with written regulations to be adopted by the Boston Redevelopment Authority after public notice and hearing. The actual Housing Creation Exaction may be approved by the Authority only after public notice and hearing.

4. "Substantially rehabilitate", to cause alterations or repairs to be made, to a building or structure, within any period of twelve (12) months, costing in excess of fifty (50) percent of the physical value of the building or structure. Physical value of a building or structure shall be based on the assessed value as recorded in the assessor's office of the City of Boston.
5. "Neighborhood Housing Trust", a Massachusetts charitable trust to be created pursuant to the Special Statutes and Ordinances of the City of Boston. The Trust will administer funds received by means of the Housing Payment Exaction requirement for Development Impact Projects.
6. "Public agency", a department, agency, board, commission, authority, or other instrumentality of the Commonwealth, or of one or more political subdivision(s) of the Commonwealth, or of the United States.

SECTION 26-3. Development Impact Project Requirements. No variance, conditional use permit, exception or zoning map or text amendment for a Development Impact Project shall be granted, allowed or adopted unless the following requirements are met:

1. The Boston Redevelopment Authority, after a public hearing, shall have approved a Development Impact Project Plan. No Plan shall be approved by the Authority unless the Authority finds that the Plan conforms to the general plan for the City as a whole and that nothing in such Plan will be injurious to the neighborhood or otherwise detrimental to the public welfare; and
2. The person or persons making application for a variance, conditional use permit, exception, or zoning map or text amendment to erect, substantially rehabilitate, enlarge, or extend a building or structure pursuant to a Development Impact Project Plan shall also have entered into an agreement with the Boston Redevelopment Authority and the Neighborhood Housing Trust to be responsible for a Development Impact Project Exaction.
 - (a) For each use listed below, in Table C, a Housing Payment Exaction of five dollars (\$5.00) for each square foot of gross floor area in excess of one hundred thousand (100,000) square feet, shall be required. Uses, other than accessory parking, that are ancillary or accessory to the uses listed in Table C shall also be subject to the Housing Payment Exaction.

TABLE C: Development Impact Uses

<u>Use</u>	<u>Use Item Numbers</u>
Office	39, 39A, 40, 41, 42
Retail Business and Service	30, 31, 32, 34, 34A, 35, 36, 36A, 37, 37A, 38, 38A, 43, 44, 45, 46, 47, 48, 49, 60, 60A, 61
Institutional and Educational	11, 12, 13, 13A, 14, 16, 16A, 17, 18, 19, 20, 20A, 21, 22, 22A, 23, 24, 29
Hotel and Motel, but not including Apartment Hotel	15

(b) For mixed-use buildings or structures in which one or more of the above uses are combined, the above requirements shall apply if the gross floor area devoted to any one or more of the said uses shall in the aggregate exceed one hundred thousand (100,000) square feet.

(c) The Housing Payment Exaction rate for the use categories listed in Table C shall be subject to recalculation five (5) years after the effective date of this provision and every five (5) years thereafter. The Boston Redevelopment Authority, after public notice and hearing, shall make a recommendation to the Zoning Commission for the amendment of the Housing Payment Exaction, based on a consideration of the following criteria:

(i) Economic trends measured in terms of development activity, commercial rents per square foot, employment growth, and inflation rates.

(ii) Housing trends measured in terms of vacancy rates for low and moderate income housing, and production statistics for new dwelling units.

The resulting analysis will determine the changes in the City's low and moderate income housing needs and the continuing ability of new, large-scale development to assist in meeting the housing needs of the City of Boston.

(d) The Building Commissioner shall not issue any building or use permit with respect to any building, structure, or land within an area covered by a Project Plan, unless the Director of the Boston Redevelopment Authority has certified on the application therefor, and on each and every plan, drawing or speci-

fication filed with the Building Commissioner in connection therewith, that the same have been subject to design review, and that the same are consistent with the Authority-approved Project Plan and that the applicant has entered into an agreement with the Boston Redevelopment Authority and the Neighborhood Housing Trust, as provided in Sections 26-2(3) and 26-3(2), above.

3. The following are not Development Impact Projects and will not be subject to the Development Impact Project Requirements:

- (a) Any building or structure for which a building or use permit is lawfully issued before notice of hearing before the Zoning Commission has first been given respecting adoption of the Development Impact Project provision, provided that construction work under such a permit is commenced within six months after its issue, and the work proceeds in good faith continuously to completion so far as is reasonably practicable under the circumstances;
- (b) Any building or structure for which construction or permanent financing has been secured, as evidenced by an irrevocable written commitment of a lending institution or a recorded mortgage indenture, and by the borrower's bona fide payment of a loan commitment fee; or
- (c) Any building or structure which is, or will be, wholly-owned by one or more public agencies.

B. By striking out in subsection 6-3(d), the word "and" after the semi-colon.

C. By striking out in subsection 6-3(e), the period after the word "use", and inserting a semi-colon in place thereof, and adding at the end, the word "and".

D. By adding to Section 6-3, after subsection (e), the following new subsection:

- (f) If such appeal relates to a Development Impact Project, as defined in Section 26-2, the applicant shall have complied with the Development Impact Project Requirements, set forth in Section 26-3.

E. By striking out, in Section 6A-3, the word "and" at the end of subsection (a).

F. By striking out, in Section 6A-3, the period at the end of subsection (b) and inserting a semi-colon in place thereof, and adding the word "and"

G. By adding, to Section 6A-3, after subsection (b), the following new subsection:

(c) if such exception relates to a Development Impact Project, as defined in Section 26-2, the applicant shall have complied with the Development Impact Project Requirements set forth in Section 26-3.

H. By striking out, in Section 7-3 the word "and" at the end of subsection (a) and at the end of subsection (b).

I. By striking out in Section 7-3, the period at the end of subsection (c), and inserting a semi-colon in place thereof, and adding the word "and".

J. By adding, to Section 7-3, after subsection (c), the following new subsection:

(d) That, if the variance is for a Development Impact Project, as defined in Section 26-2, the applicant shall have complied with the Development Impact Project Requirements, set forth in Section 26-3, except if such variance is for a deviation from said Requirements.

Text Amendment Application No. 104
Boston Redevelopment Authority
Development Impact Project
Regulations - Housing

TO THE ZONING COMMISSION OF THE CITY OF BOSTON:

The Boston Redevelopment Authority hereby petitions to amend the text of the Boston Zoning Code, as established under Chapter 665 of the Acts of 1956, as amended, as follows:

A. By inserting, after Article 26 of said Code, the following article:

ARTICLE 26A

DEVELOPMENT IMPACT PROJECTS - HOUSING

SECTION 26A-1. Statement of Purpose. The purpose of this article is to promote the public health, safety, convenience and welfare; to prevent over-crowding and deterioration of existing housing; to preserve and increase the City's housing stock; to establish a balance between new, large-scale real estate development and the housing needs of the City; and to mitigate the impacts of large-scale development on the available supply of low and moderate income housing, by provisions designed to:

1. Afford review and regulation of large-scale real estate development projects which directly or indirectly displace low or moderate income residents from housing units or contribute to an increase in the costs of housing.
2. Increase the availability of low and moderate income housing by requiring developers, as a condition of the grant of deviations from the Zoning Code or the grant of an amendment to the zoning map or text, to create low and moderate income housing or to make a housing contribution grant to the Neighborhood Housing Trust ("Trust").

SECTION 26A-2. Definitions.

1. "Development Impact Project", any development in the City in which it is proposed to erect a structure or structures having a total gross floor area (exclusive of all accessory parking garage space) in excess of one hundred thousand (100,000) square feet or to enlarge or extend a structure or structures so as to increase its (or their) gross floor area (exclusive of all accessory parking garage space) by more than one hundred thousand (100,000) square feet or to substantially rehabilitate a structure or structures having, or to have, after rehabilitation, a gross floor area (exclusive of all accessory parking garage space) of more than one hundred thousand (100,000) square feet; which structure or structures is (are) intended for a use for which the use item number is listed in Table D, Section 26A-3(2)(a), or, for a use for which the use item

number is not listed if such Project will directly result in a reduction in the supply of low and moderate income dwelling units as determined by the Boston Redevelopment Authority ("Authority") and which Project requires a variance, conditional use permit, exception, or zoning map or text amendment.

2. "Development Impact Project Plan", a plan for a project which is a Development Impact Project. The Plan shall set forth the proposed location and appearance of structures, open spaces and landscaping, proposed uses of the structure or structures, densities, projected number of employees, proposed traffic circulation, parking and loading facilities, access to public transportation, and proposed dimensions of structures, and may include proposed building elevations, schematic layout drawings and exterior building materials, the neighborhood where the Project is located and the adjacent neighborhoods, and such other matters as the Director of the Authority deems appropriate to his consideration of the proposed construction.
3. "Development Impact Project Contribution", the creation, by the Project applicant, of low and moderate income housing units by means of the Housing Creation Option, or the grant and payment of a sum of money by the Project applicant by means of the Housing Contribution Option calculated according to the formula as set forth in Section 26A-3(2), to and for the exclusive benefit of the Neighborhood Housing Trust.
 - (a) The Housing Creation Option shall be met by creating or causing to be created housing units, for occupancy exclusively by low and moderate income residents of the City, at a cost at least equivalent to the amount of the Housing Contribution Grant, and in conformity with written regulations to be adopted by the Authority after public notice and hearing. The actual Housing Creation Contribution may be approved by the Authority only after public notice and hearing.
 - (b) The Housing Contribution Grant shall be made to the Neighborhood Housing Trust in seven (7) equal, annual installments, the first installment due upon the issuance of a building permit. The remaining six (6) payments of the Grant shall be due and payable annually on the anniversary of the first payment. All payments constituting the Housing Contribution Grant shall be made to the Collector-Treasurer of the City as custodian pending acceptance of such payments for the Trust by the City. Any payments made by the Project applicant to the Neighborhood Housing Trust, on account of the Housing Contribution Option, shall be credited against any amounts due to said Trust on account of any neighborhood impact excise which may be assessed by the City.
 - (c) Ten percent (10%) of any Housing Contribution Grant made for projects located in the area lying within the boundaries set forth in Section 26A-4 and twenty percent (20%) of any Housing Contribution Grant made for projects located in areas lying outside of these boundaries shall be reserved for the neighborhood or neighborhoods where or adjacent to where the Project is located ("impacted neighborhood") as defined in the approved Development Impact

Project Plan, provided that the Neighborhood Housing Trust finds that in the targeted area proposals for feasible housing projects can be developed.

4. "Substantially rehabilitate", to cause alterations or repairs to be made, to a structure or structures, costing in excess of fifty percent (50%) of the physical value of the structure or structures. Physical value of a structure or structures shall be based on the assessed value as recorded on the assessment rolls of the City as of the January 1 preceding the date of the application for Development Impact Project Plan approval.
5. "Neighborhood Housing Trust"; a Massachusetts public charitable trust created under the laws of the Commonwealth on November 19, 1985 and administered by the Collector-Treasurer of the City as managing trustee or another trust, if passed by the Council and approved by the Mayor.
6. "Public agency", a department, agency, board, commission, authority, or other instrumentality of the Commonwealth, or of one or more political subdivision(s) of the Commonwealth or of the United States.
7. "Low and moderate income residents", households located in the city whose total annual income is not more than eighty percent (80%) of the median income for the Boston area as set forth in regulations promulgated from time to time by the United States Department of Housing and Urban Development pursuant to the Housing and Community Development Act of 1974, as amended.

SECTION 26A-3. Development Impact Project Requirements. No variance, conditional use permit, exception or zoning map or text amendment for a Development Impact Project shall be granted or adopted unless the following requirements are met:

1. The Authority, after a public meeting, shall have approved a Development Impact Project Plan. No Plan shall be approved by the Authority unless the Authority finds that the Plan conforms to the general plan for the City as a whole and that nothing in such Plan will be injurious to the neighborhood or otherwise detrimental to the public welfare; and
2. The person or persons making application for a variance, conditional use permit, exception or zoning map or text amendment to erect, substantially rehabilitate, enlarge, or extend a structure pursuant to a Development Impact Project Plan shall also have entered into an agreement with the Authority to make a Development Impact Project Contribution.
 - (a) For each use listed below, in Table D, a Housing Contribution Grant of five dollars (\$5.00) for each square foot of gross floor area in excess of one hundred thousand (100,000) square feet, shall be required. Uses, other than accessory parking, that are ancillary or accessory to the uses listed in Table D shall also be subject to the Housing Contribution Grant requirement.

TABLE D: Development Impact Uses

<u>Use</u>	<u>Use Item Numbers</u>
Office	39, 39A, 40, 41, 42
Retail Business and Service	30, 31, 32, 34, 34A, 35, 36, 36A, 37, 37A, 38, 38A, 43, 44, 45, 46, 47, 48, 49, 60, 60A, 61
Institutional and Educational	16, 16A, 18, 19, 20, 20A, 21, 22, 22A, 23, 24, 29
Hotel and Motel, but not including Apartment Hotel	15

- (b) For mixed-use structures in which one or more of the above uses are combined, the above requirements shall apply if the gross floor area devoted to any one or more of the uses shall in the aggregate exceed one hundred thousand (100,000) square feet.
- (c) The formula (amount and rate of payment) for the Housing Contribution Grant for the use categories listed in Table D shall be subject to recalculation three (3) years after the effective date of this provision and every three (3) years thereafter. The Authority, after public notice and public hearing, when appropriate shall make a recommendation to the Zoning Commission to amend the formula for the Housing Contribution Grant, based on a consideration of the following criteria:
 - (i) Economic trends measured in terms including but not limited to development activity, commercial rents per square foot, employment growth, and inflation rates.
 - (ii) Housing trends measured in terms of, including but not limited to, vacancy rates for low and moderate income housing, and production statistics for new dwelling units.
- (d) The Commissioner of Inspectional Services shall not issue any building or use permit with respect to any building, structure, or land within an area covered by a Development Impact Project Plan, unless the Director of the Authority has certified on the application therefor, and on each plan, drawing or specification filed with the Commissioner in connection therewith, that the plans have been subject to design review, and that the plans are consistent with the Authority-approved Development Impact Project Plan and that the applicant has entered into an agreement with the Authority, as provided in Sections 26A-2(3) and 26A-3(2).

3. The following are not Development Impact Projects and will not be subject to the Development Impact Project requirements:
 - (a) Any structure for which a building or use permit is lawfully issued before notice of hearing before the Zoning Commission has first been given respecting adoption of Article 26A, provided that construction work under such a permit is commenced within six months after its issue, and the work proceeds in good faith continuously to completion so far as is reasonably practicable under the circumstances;
 - (b) Any structure for which construction or permanent financing has been secured before notice of hearing before the Zoning Commission has first been given respecting Article 26A, as evidenced by an irrevocable written commitment of a lending institution or a recorded mortgage indenture, and by the borrower's bona fide payment of a loan commitment fee; or
 - (c) Any building or structure which is, or will be, wholly-owned by one or more public agencies.
4. Article 26A supplements and does not repeal Article 26, which shall continue to apply to Development Impact Project Plans that were approved pursuant to Article 26. Development Impact Project Plans approved pursuant to Article 26 prior to the effective date of Article 26A shall not be subject to the requirements of Article 26A.

SECTION 26A-4. Applicability. The rate of payment set forth in Section 26A-2(3)(b) shall only apply to Development Impact Projects located in an area lying within the boundaries set forth below:

Beginning at the intersection of the southern bank of the Charles River and the centerline of Massachusetts Avenue and running southerly and southeasterly along the centerline of Massachusetts Avenue to the intersection with the centerline of Tremont Street;

Thence running northeasterly along the centerline of Tremont Street to the centerline of East Berkeley Street;

Thence running easterly along the centerline of East Berkeley Street and the West Fourth Street Bridge to the intersection with the centerline of Dorchester Avenue;

Thence running northerly along the centerline of old Dorchester Avenue to the intersection with the edge of land on the northwesterly side of Fort Point Channel;

Thence running northeasterly along the water's edge or the U.S. Pierhead Line, whichever shall be more inclusive, to the Metropolitan District Commission Dam at the mouth of the Charles River;

Thence running across the southerly side of the Metropolitan District Commission Dam and along the southerly bank of the Charles River to

the beginning point at the intersection thereof with the centerline of Massachusetts Avenue.

The rate of payment set forth in Section 26-2(3)(a) shall apply to Development Impact Projects located in all other areas of the City. Section 26-2(3)(a) provides in relevant part that:

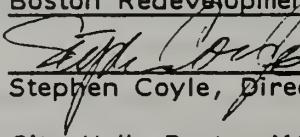
The Housing Contribution Grant shall be made to the Neighborhood Housing Trust in twelve (12) equal, annual installments, the first installment due upon the issuance of a certificate of occupancy for the Project building or twenty-four (24) months after the granting of the building permit, whichever comes first. The remaining eleven (11) payments shall be due and payable annually on the anniversary of the first payment.

Where the boundary described above divides a Development Impact Project, the rate of payment set forth in Section 26A-2(3)(b) shall apply. Use item numbers 11, 12, 13, 13A, 14 and 17 shall be exempt from the provisions of Articles 26 and 26A.

SECTION 26A-5. Severability. The provisions of this Article are severable, and if any such provision or provisions shall be ruled invalid by any decision of court of competent jurisdiction, such decision shall not impair or otherwise affect any other provision of this Article.

- B. By adding, in Section 6-3(f), after "Section 26-2," the phrase "26A-2 or 26B-2," and after "Section 26-3" deleting the period and adding the phrase "or 26A-3 and in Section 26B-3."
- C. By adding, in Section 6A-3(c), after "Section 26-2," the phrase "26A-2 or 26B-2," and after "Section 26-3" deleting the period and adding the phrase "or 26A-3 and in Section 26B-3."
- D. By adding, in Section 7-3(d), after "Section 26-2," the phrase "26A-2 or 26B-2," and after "Section 26-3," deleting the comma and adding the phrase "or 26A-3 and in Section 26B-3,".

Petitioner: Boston Redevelopment Authority

By: 

Stephen Coyle, Director

Address: City Hall, Boston MA 02201

Tel. No. 722-4300, Extension 281

Date: February 12, 1986

Text Amendment Application No. 105
Boston Redevelopment Authority
Development Impact Project
Regulations - Job Training

To the Zoning Commission of the City of Boston:

The Boston Redevelopment Authority hereby petitions to amend the text of the Boston Zoning Code, as established under Chapter 665 of the Acts of 1956, as amended, as follows:

A. By inserting, after Article 26A of said Code, the following article:

ARTICLE 26B

DEVELOPMENT IMPACT PROJECTS - JOB TRAINING

SECTION 26B-1. Statement of Purpose.

The purpose of this article is to promote the public health, safety, convenience and welfare and to mitigate the adverse impacts of new large-scale real estate development projects on existing development by providing for job training for low and moderate income people. In particular, the owners of new commercial uses, which are more capital intensive and less land intensive than industrial uses, can pay more for land than owners of manufacturing uses; therefore these uses directly result in higher land costs and indirectly cause further land price increases by increasing housing demand. Workers will therefore need to be trained so that they will have the job skills necessary to compete for these new jobs. This Article is designed to:

1. Afford review and to regulate large-scale real estate development projects which result in the creation of new jobs, requiring the creation of new job training programs or the expansion of existing ones.
2. Increase the opportunities for job training for low and moderate income people by requiring developers, as a condition of the grant of deviations from the Zoning Code or the grant of an amendment to the zoning map or text, to make a development impact payment to the Neighborhood Jobs Trust.

SECTION 26B-2. Definitions.

1. "Development Impact Project", any development in the City of Boston ("City") in which it is proposed to erect a structure or structures having a gross floor area (exclusive of all accessory parking garage space) in excess of one hundred thousand (100,000) square feet or to enlarge or extend a structure or structures so as to increase its (or their) gross floor area (exclusive of all accessory parking garage space) by more than one hundred thousand (100,000) square feet or to substantially rehabilitate a structure or structures having, or to have, after rehabilitation, a gross floor area (exclusive of all accessory parking garage space) of more than one hundred thousand (100,000) square feet; which structure or structures is (are) intended for a use for which the

use item number is listed in Table E, Section 26B-3; and which development requires a variance, conditional use permit, exception, or zoning map or text amendment.

2. "Development Impact Project Plan", a plan for a project which is a Development Impact Project. The Plan shall set forth the proposed location and appearance of structures, open spaces and landscaping, proposed uses of the structure or structures, densities, projected number of employees, proposed traffic circulation, parking and loading facilities, access to public transportation, and proposed dimensions of structures, and may include proposed building elevations, schematic layout drawings and exterior building materials, and such other matters as the Director of the Boston Redevelopment Authority ("Authority") deems appropriate to his consideration of the proposed construction.
3. "Jobs Contribution Grant", the payment of a sum of money by the Project applicant, for which a formula for payment is set forth in Section 26B-3(1)(a), to or for the exclusive benefit of the Neighborhood Jobs Trust.
 - a. The Jobs Contribution Grant shall be made to the Neighborhood Jobs Trust in two (2) equal, annual installments, the first installment due upon the issuance of a building permit. The remaining payment shall be due and payable on the anniversary of the first payment. All Jobs Contribution Grants shall be made to the Collector-Treasurer of the City as custodian, pending acceptance of such payments for the Neighborhood Jobs Trust by the City. All Jobs Contribution Grants shall be credited against any amounts due to said Trust on account of any neighborhood impact excise which may be assessed by the City.
 - b. Twenty percent (20%) of any Jobs Contribution Grant shall be reserved for the neighborhood or neighborhoods where or adjacent to where the Project is located, as defined in the approved Development Impact Project Plan.
 - c. Jobs Creation Contribution. A project applicant may use its Jobs Contribution Grant to create a job training program for workers who will be employed, on a permanent basis, at the Project, upon approval by the Director of the Mayor's Office of Jobs and Community Services.
4. "Substantially rehabilitate", to cause alterations or repairs to be made, to a structure or structures, within any period of twelve (12) months, costing in excess of fifty percent (50%) of the physical value of the structure or structures. Physical value shall be based on the assessed value as recorded on the assessment rolls of the City as of January 1 next preceding the date of the application for Development Impact Project Plan approval.
5. "Neighborhood Jobs Trust", a Massachusetts public charitable trust created under the laws of the Commonwealth on November 19, 1985 and administered by the Collector-Treasurer of the City as managing trustee or another trust, if passed by the Council and approved by the Mayor.

6. "Public agency", a department, agency, board, commission, authority, or other instrumentality of the Commonwealth, or of one or more political subdivision(s) of the Commonwealth, or of the United States.

SECTION 26B-3. Development Impact Project Requirements. No variance, conditional use permit, exception or zoning map or text amendment for a Development Impact Project shall be granted or adopted unless the following requirements are met in addition to those set forth in Section 26A-3:

1. The person or persons making application for a variance, conditional use permit, exception, or zoning map or text amendment to erect, substantially rehabilitate, enlarge, or extend a structure pursuant to a Development Impact Project Plan approval shall also have entered into an agreement with the Authority to make a Jobs Contribution Grant in the amount specified in (a) below.
 - (a) For each use listed in Table E, a Jobs Contribution Grant of one dollar (\$1.00) for each square foot of gross floor area in excess of one hundred thousand (100,000) square feet, shall be required. Uses, other than accessory parking, that are accessory to the uses listed in Table E shall also be subject to the Jobs Contribution Grant.

TABLE E: Development Impact Uses

<u>Use</u>	<u>Use Item Numbers</u>
Office	39, 39A, 40, 41, 42
Retail Business and Service	30, 31, 32, 34, 34A, 35, 36, 36A, 37, 37A, 38, 38A, 43, 44, 45, 46, 47, 48, 49, 60, 60A, 61
Institutional and Educational	16, 16A, 18, 19, 20, 20A, 21, 22, 22A, 23, 24, 29
Hotel and Motel, but not including Apartment Hotel	15

- (b) For mixed-use structures in which one or more of the above uses are combined, the above requirements shall apply if the gross floor area devoted to any one or more of the uses shall in the aggregate exceed one hundred thousand (100,000) square feet.
- (c) The formula (amount and rate of payment) for the Jobs Contribution Grant for the use categories listed in Table E shall be subject to recalculation three (3) years after the effective date of this provision and every three (3) years thereafter. The Authority, after public notice and public hearing, where appropriate, shall

make a recommendation to the Zoning Commission to amend the formula for the Jobs Contribution Grant, based on a consideration of the following criteria:

- (i) Economic trends measured in terms of, including but not limited to, development activity, commercial rents per square foot, employment growth, and inflation rates.
- (ii) Employment trends measured in terms of, including but not limited to, unemployment rates, and statistics on job training programs.

The resulting analysis will determine the changes in the City's employment training needs and the continuing ability of new, large-scale development to assist in meeting the employment training needs of the City.

- (d) The Commissioner of Inspectional Services shall not issue any building or use permit with respect to any building, structure, or land within an area covered by a Development Impact Project Plan, unless the Director of the Authority has certified on the application therefor, and on each plan, drawing or specification filed with the Commissioner in connection therewith, that the plans have been subject to design review, and that the plans are consistent with the Authority-approved Development Impact Project Plan and that the applicant has entered into an agreement with the Authority, as provided in Sections 26B-2(3) and 26B-3(1).

2. The following are not Development Impact Projects and will not be subject to the Development Impact Project requirements:

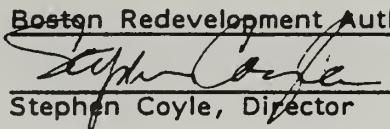
- (a) Any structure or structures for which a building or use permit is lawfully issued before notice of hearing before the Zoning Commission has first been given respecting adoption of Article 26B, provided that construction work under such a permit is commenced within six (6) months after its issue, and the work proceeds in good faith continuously to completion so far as is reasonably practicable under the circumstances;
- (b) Any building or structure for which construction or permanent financing has been secured before notice of hearing before the Zoning Commission has first been given respecting Article 26A, as evidenced by an irrevocable written commitment of a lending institution or a recorded mortgage indenture, and by the borrower's bona fide payment of a loan commitment fee; or
- (c) Any building or structure which is, or will be, wholly-owned by one or more public agencies.

3. Development Impact Project Plans approved pursuant to Article 26 prior to the effective date of Article 26B shall not be subject to the requirements of Article 26B.

SECTION 26B-4. Severability. The provisions of this Article are severable, and if any such provision or provisions shall be ruled invalid by any decision of any court of competent jurisdiction, such decision shall not impair or otherwise affect any other provision of this Article.

Petitioner: Boston Redevelopment Authority

By:


Stephen Coyle
Stephen Coyle, Director

Address: City Hall, Boston, MA 02201

Tel. No. 722-4300, Extension 281

Date: February 12, 1986

CAMBRIDGE INCLUSIONARY HOUSING PROPOSAL

DRAFT 9/19/84

Create a new Section 11.90

11.90 Low and Moderate Income Household Inclusionary Housing Requirements for Residential, Office, Institutional and Retail Development.

11.91 Purpose

This Section 11.90 is intended to require the provision of low and/or moderate income family housing as a component of most new housing developments in the City of Cambridge; to assist in the provision of adequate housing for all citizens of Cambridge; to encourage a reasonable mix of housing opportunities in all city neighborhoods and in commercial development and to mitigate the escalation of the cost of housing in Cambridge as a result of new large scale non-residential development.

11.92 Applicability

11.921 The provisions of this Section 11.90 shall apply to any residential, office, institutional and retail development containing any one or combination of the following uses:

Housing Uses

- (a) Detached dwelling for one family (4.31 a)
- (b) Two family dwelling (4.31 b)
- (c) Townhouse development (4.31 d)
- (d) Multifamily dwellings (4.31 g)
- (e) Existing dwelling converted for more than two families (4.31 h)
- (f) Elderly oriented congregate housing (4.31e)
- (g) Existing dwelling converted for elderly oriented congregate housing (4.31f)

Office, Retail and Institutional Uses

- (h) Hotel or Motel (4.31 i(2))
- (i) Radio and television studio (4.32f)
- (j) Office and laboratory use (4.34)
- (k) Retail business and consumer service establishments (4.35)
- (l) Institutional Uses (4.33 as detailed in 4.56c 5, 6,8; d 1, 2; e 1-7)

11.922(a) The uses listed in the above Section 11.921 shall comply with the provisions of this Section 11.90 when they are created by (a) new construction; (b) conversion of a non-residential structure to residential use; (c) conversion from any use not listed in 11.921 above. For the purpose of this Subsection 11.922 new construction shall include substantial rehabilitation costing more than 50% of the replacement value of the structure. No provisions of this Section 11.90 regarding substantial rehabilitation shall modify any requirement for a removal permit for housing units subject to rent control.

(b) Except for non-residential structures converted to residential uses listed in 11.921 above no structure once subject to the provisions of this Section 11.90 shall be additionally subject to this Section if converted to another use listed in Subsection 11.921. The provisions of this paragraph 11.922(b) shall not apply to any new additions or expansion of a structure which have not themselves been subject to the provisions of Section 11.90

11.93 Quantity Requirements for Residential Uses

11.931 Purpose

These requirements are intended to ensure that most new residential development in the City contain units available to low and moderate income families who are not served by new market rate housing construction.

11.932 Any residential development subject to this Section 11.90 as determined by Section 11.92 above, and which does not contain seven (7) or fewer units as defined in paragraph (a), must obtain a special permit under this section 11.93. The Planning Board shall issue such a special permit only if it determines that the development will make provision for units suitable for, affordable by and available to low and moderate income households (herein after known as required units) in an amount equal to at least 25 percent of the total number of units authorized according to the following schedule:

- (a) The first seven (7) residential units constructed after the effective date of this Section 11.90 on a lot as defined in Section 11.98 shall be exempt from the requirements of this Section 11.90.
- (b) For all non-exempt residential units authorized after the effective date of this Section 11.90 on a lot as defined in section 11.98, 25% shall be for low and moderate income households. Where the application of the 25 percent requirement results in a fractional number, one additional inclusionary unit shall be provided.

11.94 Quantity Requirements for Office, Institutional and Retail Development

11.941 Purpose

These requirements are intended to ensure that the increased demand for housing generated by new employees brought to Cambridge by commercial development does not further disadvantage low and moderate income families already unable to secure adequate affordable housing.

11.942 Any office, institutional or retail development subject to this Section 11.90 as determined by Section 11.92 above and which exceeds 10,000 square feet of gross floor area as defined in paragraph (a), must obtain a special permit under this Section 11.94. The Planning Board shall issue such a special permit only if it determines that the development will make provision for residential dwelling units suitable for, affordable by and available to low and moderate-income households in an amount determined by the following schedule:

- (a) The first 10,000 square feet of gross floor area constructed after the effective date of this Section 11.90 on a lot as defined in 11.98 of this Section 11.90 shall be exempt from requirements of this Section 11.90.
- (b) For all non-exempt gross floor area required inclusionary housing shall be provided at the rate of one unit for each 10,000 square feet of gross floor area authorized. Where the application of the requirement results in a fraction of a unit, one full unit shall be provided.

11.95 Options for provision of required units

11.951 The low and moderate income units required in Section 11.93 and 11.94 may be provided in any one or combination of the following ways:

- (a) Construction of new units on the permit site or on another site or sites elsewhere in Cambridge provided the provisions of this Section 11.90 are met.
- (b) Cash payment to the City of Cambridge to be administered by the Cambridge Housing Development Trust herein established to be used to make available housing units for low and moderate income households in a manner and at locations in conformance with provision of this section 11.90.
- (c) Conveyance of vacant land to the City of Cambridge which in all aspects of location, zoning, access, shape, etc. is suitable for the construction of housing and has a current appraised fair market value at least equal to (b) above.

11.96 Determination of Cash Equivalency

The cash equivalent of the required units, as authorized in 11.951 (b) above, shall be determined on a yearly basis by the Cambridge Housing Development Trust and shall be equal to the current total construction cost of the unit or units required.

11.97 Characteristics of Required Units

11.971 The required units shall be provided in the following rotating sequence:

- (a) (1) One low income unit; (2) One low income unit; (3) One moderate income unit.
- (b) Low and moderate income units shall in turn observe the following rotating sequence:
 - (1) One three bedroom unit.
 - (2) One Two bedroom unit.

To illustrate, the first six required units shall have the following characteristics:

First unit - Low income three bedroom unit.
Second unit - Low income two Bedroom unit.
Third unit - Moderate income three bedroom unit.
Fourth unit - Low income three bedroom unit.
Fifth unit - Low income two bedroom unit.
Sixth unit - Moderate income two bedroom unit.

11.972 Where a dwelling to which this Section 11.90 applies is to be devoted exclusively to elderly residents the restrictions in Subsection 11.971 as to unit size shall not apply.

11.973 In no case shall the average size of required units be less than the average size of all other equivalent units authorized. Where no equivalent market rate units are authorized the Cambridge Housing Development Trust shall establish standards for the size of required units which shall be consistent with the size of similar units in public, assisted, and market rate housing.

11.974 The required units shall be dispersed throughout the housing development and not concentrated in any one location.

11.975 For the purposes of this Section 11.90 a low income household shall be one having an eligible income not exceeding 50% of the median family income for the Boston Metropolitan Area; a moderate income household shall be one having an eligible income greater than 50% and not exceeding 80% of the median; the median family income shall be as determined by the Federal Department of Housing and Urban Development or any successor agency, and shall be adjusted for family size.

11.976 The applicant shall establish such restrictions, conditions, and/or limitations as are necessary to ensure that the units required for low and moderate income households will be permanently available for those low and moderate income households. To the extent possible preference shall be given to Cambridge residents.

11.977 Where the housing is to be constructed in stages the required low and moderate income units shall be provided in each stage in the same proportion as required for the total development unless otherwise permitted by the Planning Board upon a positive recommendation by the Trust.

11.978 The provisions of Subsections 11.93 and 11.94 shall not apply to housing constructed by a public agency or non-profit corporation using a federal, state or local housing assistance program provided the intent of these regulations are met.

11.98 **Property Subject to this Section**

The provisions of this Section 11.90 shall apply to all new, substantially rehabilitated, or converted buildings constructed on a lot subsequent to the effective date of this Section 11.90. For the purpose of this Section 11.90 a lot shall be lot or series of adjacent lots in the same ownership at the time of the effective date of this Section 11.90 regardless of any subsequent change in ownership or subdivision of such lots. The provisions of Section 11.93 and 11.94 shall be applied to the cumulative number of units or gross floor area constructed after the effective date of this Section 11.90 as determined by this Section 11.98.

11.99 **Compliance**

11.991 **Cambridge Housing Development Trust Fund Board**

There shall be established a Cambridge Housing Development Trust which shall be an agency of the City of Cambridge and shall be governed by a five member board of trustees who shall be residents of Cambridge and appointed by the City Manager, as follows.

- (a) a representative from the Cambridge Housing Authority
- (b) a representative of a Cambridge based non-profit housing corporation
- (c) a tenant in a public or subsidized housing unit
- (d) a tenant in any other housing unit

(e) a Cambridge based business person or real estate developer

11.992 Powers, Duties and Responsibilities of the Trust

The Trust shall:

- (a) Manage and dispense all funds and land conveyed to the City of Cambridge under the provisions of this Section 11.90 for the support of low and moderate income housing required by this Section 11.90.
- (b) Develop such regulations as may be appropriate for the design and location of all housing required and for any documents, procedures and agreements necessary to carry out the provisions of this Section 11.90.
- (c) Provide assistance to the Planning Board and the Superintendent of Buildings in the enforcement of, and in determining compliance with, this Section 11.90.

The Trust shall have all powers necessary to carry out its responsibilities under the provisions of this Section 11.90 and shall receive staff, technical and administrative assistance from the Cambridge Community Development Department

11.993 All deeds, agreements, site plans, and other documents necessary to comply with the provisions of this Section 11.90 shall be submitted to the Cambridge Housing Development Trust for review prior to the issuance of a special permit. Within sixty-five (65) days of such submittal the Trust shall make a report to the Planning Board as to whether all requirements of this section 11.90 have been met. No special permit may be issued until the Planning Board has received such written report from the trust.

All agreements necessary to insure the construction of units or equivalent payment to the City shall be executed before the issuance of a special permit. No certificate of occupancy for any building shall be

issued until the units required have been constructed, the payment required has been made to the City, or an arrangement has been made for payment over an agreed upon length of time.

Any required payments shall constitute a lien on the property. The Superintendent of Buildings shall require the execution of such surety as may be necessary to ensure the required payment to the City of Cambridge should such payment be made after the issuance of a certificate of occupancy.

11.994 The provisions of this Section 11.90 are severable, and if a court holds invalid any such provision, or its application to any person, property, or circumstance, such invalidity shall not impair the validity of any other provision or application which can be given effect in the absence of the invalid provision or application.

IV-D Residential Cluster Development - Special Permit

12. Bonus Provisions

Upon application, the Board may permit additional dwelling units in the proposed cluster development provided that:

- (a) the otherwise allowable density not be exceeded by more than 10 percent;
- (b) such additional dwelling units are to be purchased by the Hingham Housing Authority for the purpose of meeting low and moderate income housing needs of the Town;
- (c) a purchase and sale agreement has theretofore been executed by the developer and the Hingham Housing Authority with respect to such additional dwelling units;
- (d) such additional dwelling units are similar in character to other dwelling units in the proposed cluster development;
- (e) such additional dwelling units comply generally with the same requirements and regulations applicable to other dwelling units in the proposed cluster development; and,
- (f) the Board finds that such additional dwelling units may be permitted consistent with the purposes enumerated in Paragraph 1 of this Section IV-D.

ZONING

By-Law

APRIL 1977

AMENDED THROUGH ANNUAL TOWN MEETING 1982

Concord, Massachusetts



SECTION 9 PLANNED RESIDENTIAL DEVELOPMENT (PRD)

9.1 Purpose - Planned Residential Development allows by special permit from the Board an alternative pattern of land development to the pattern permitted in the residential districts. It is intended to encourage the conservation of more significant open space, while at the same time providing for a greater mixture of housing types in the Town at somewhat greater dwelling unit densities than is permitted in residential districts without a significant increase in Town-wide population density. In a PRD, dwelling units should be constructed in appropriate clusters which are harmonious with neighborhood development and will not detract from the ecological and visual qualities of the environment. The overall site design and amenities should enhance the quality of living for the residents of the development, the immediate neighborhood and the Town generally. Attention, however, shall be given by the Board as to whether the proposed site design, development layout, number, type and design of housing constitute a suitable development for the neighborhood within which it is to be located.

9.2 Standards

9.2.1 Minimum Tract Size - Planned Residential Development shall be permitted upon a single tract, in one ownership with definite boundaries ascertainable from a recorded deed or recorded plan, which has an area of not less than five times the minimum lot area of the zoning district within which it is situated (Residence C - 50,000 square feet; Residence B - 100,000 square feet; Residence A - 200,000 square feet; Residence AA - 400,000 square feet). Existing public or private ways need not constitute boundaries of the tract but the area within any such ways shall not be counted in determining minimum tract size.

9.2.2 Permissible Density - Subject to the limitations upon density contained in Subsection 9.2.3 below, the number of dwelling units permitted within any PRD shall be determined by the Board to assure compliance with the purpose of Planned Residential Development and shall not exceed the number obtained by applying one or more of Subsections 9.2.2.1 through 9.2.2.3 of this Subsection 9.2.2.

9.2.2.1 PRD Tract - The number of dwelling units obtained by dividing the sum of (1) the area of the tract exclusive of land situated within the Flood Plain or Wetlands Conservancy Districts, and (2) 10% of the area of land situated within the Flood Plain or Wetlands Conservancy Districts by the minimum standard lot size permitted in the zoning district(s) within which the tract is

located; provided that no land shall be included which at the time of the submission of an application under this Section is subject to a perpetual restriction of the type described in G.L. c. 184 Sec. 31 or any restriction similar thereto.

9.2.2.2 Transferable Development Rights - The density of the PRD tract may be increased by conveying to the Town, or by restricting for the benefit of the Town, land which is not within the PRD tract and which at the time of submission of an application under this Section was in private ownership and unencumbered by a perpetual restriction of the type described in G.L. c 184 Sec. 31 or any restriction similar thereto, provided that the Board shall determine that such transfer or restriction is consonant with the purposes of this By-Law generally and this section 9 in particular. The number of transferable units is obtained by determining the area of land situated outside the Flood Plain or Wetlands Conservancy Districts and the area of land situated within the Flood Plain or Wetlands Conservancy Districts and by (1) dividing each such area of land situated in any one or more residential district(s) which the applicant proposes to convey or restrict by the minimum lot size permitted in the zoning district(s) within which such land is located and by (2) multiplying the number obtained therefrom by the appropriate following percentages:

- (a) 60% if such conveyance is of the entire fee interest in land none of which is situated within the Flood Plain or Wetlands Conservancy District; or
- (b) 10% if such conveyance is of the entire fee interest in the land and such land is situated within the Flood Plain or Wetlands Conservancy Districts; or
- (c) 30% if such conveyance is of a perpetual restriction of the type described in G.L. c. 184 Sec. 31 upon land none of which is situated within the Flood Plain or Wetlands Conservancy Districts; or
- (d) 5% if such conveyance is of a perpetual restriction of the type described in G.L. c. 184 Sec. 31 and such land is situated within the Flood Plain or Wetlands Conservancy Districts.

9.2.2.3 Low and Moderate Income Housing - The number of dwelling units obtained through application of either or both of Subsections 9.2.2.1 and 9.2.2.2 above may be increased by 15% if between 15% and 40% of the total

Concord Zoning Bylaw SECTION 9 PRD CONTINUED

number of units within the PRD are low or moderate income housing. Low and moderate income housing shall mean any housing subsidized by the Federal or State Government under any program of the type described in Chapter 774 including future amendments thereto and corresponding provisions of future laws.

9.2.3 Maximum Allowable Density - In no case shall the total number of units permitted within any PRD exceed twice the number obtained by application of Subsection 9.2.2.1 above, and in no case shall that portion of any PRD which lies outside the Flood Plain and Wetlands Conservancy Districts contain less than 5,000 square feet of area for each dwelling unit.

9.2.4 Permitted Uses - There shall be permitted in any PRD:

9.2.4.1 Single family detached and semi-detached dwellings, two-family dwellings, and multiple-unit dwellings of all types without regard to dwelling unit configuration or form of ownership; provided, however, no multi-unit dwelling shall contain more than four dwelling units.

9.2.4.2 Accessory uses incidental to the principal uses indicated above.

9.2.5 Lot Area, Frontage and Yard Requirements - There shall be no minimum lot area, frontage or yard requirements within a PRD. However, no building shall be erected within 20 feet of a public way or boundary line of the PRD in the Residence C and B Districts, and within 40 feet in the Residence A and AA Districts.

9.2.6 Height - The maximum permitted height of any structure within a PRD shall be 35 feet.

9.2.7 Area of Residential Development - The area developed for residential use, including buildings, parking and other areas paved for vehicular use, shall not exceed 30% of the total area of the PRD tract. Foot and bicycle paths and recreation facilities, including buildings wholly devoted to recreation, shall not be counted in calculating the 30% limitation.

9.2.8 Common Open Space - All land within the PRD tract which is not covered by buildings, roads, driveways, parking areas or service areas, or which is not set aside as private yards, patios or gardens for the residents, shall be Common Open Space. The area of the Common Open Space shall equal at least 40% of the total area of the PRD tract. Such land shall have a shape, dimension, character and location suitable to assure

its use for park, recreation, conservation or agricultural purposes by at least all the residents of the PRD.

Provision shall be made so that the Common Open Space shall be owned in common by and readily accessible to the owners and occupants of all units in the PRD, or by a membership corporation, trust or association whose members are all the owners and occupants of the units, or by the Town, or otherwise as the Board may direct. In all cases, a perpetual restriction of the type described in G.L. c. 184 Sec. 31 (including future amendments thereto and corresponding provisions of future laws) running to or enforceable by the Town shall be recorded in respect to such land. Such restriction shall provide that the Common Open Space shall be retained in perpetuity for one or more of the following uses: conservation, agriculture, recreation or park. Such restriction shall be in such form and substance as the Board shall prescribe and may contain such additional restrictions on development and use of the Common Open Space as the Board may deem appropriate.

9.2.9 Limitation of Subdivision - No lot shown on a plan for which a permit is granted under this Section may be further subdivided, and a notation to this effect shall be shown on the plan.

9.2.10 Special Provision for the Concord Housing Authority - Except as provided in Subsection 9.2.6 above, the limitations contained in Subsection 9.2. shall not apply to a PRD which will be owned by the Concord Housing Authority and for which it is the applicant, provided that the Board shall find that the proposed design is generally consonant with the purposes of this By-law.

9.2.11 Special Provisions for Converted School Building and Municipal Building - The limitations contained in Subsection 9.2 above shall not apply to Applications for conversion of private or public school buildings and municipal buildings to residential use, provided that any such PRD Conversion which varies from the aforesaid limitations shall be issued a special permit only in accordance with the following procedures:

9.2.11.1 An Application for the proposed PRD Conversion, in such form and containing such information as the Planning Board may require in order to evaluate the overall suitability of the proposed use in light of the purposes of Section 9 of this By-law, shall be submitted to the Planning Board. The Planning Board shall consider such Application and, if its evaluation

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thereof is favorable, shall submit to the Town Meeting such evaluation and its recommendations regarding the Application.

- 9.2.11.2 At such Town Meeting, approval of the Application for the PRD Conversion shall be by a two-thirds vote of those present and voting. A copy of the complete Application as approved by the Town Meeting, including any modifications or additional restrictions or requirements, shall be filed with the Town Clerk within ten days of final adjournment of the Town Meeting approving such Application, together with a non-refundable filing fee considered appropriate to cover the cost.
- 9.2.11.3 Not later than nine months from the date of such filing with the Town Clerk, an application for a special permit shall be submitted to the Board for the PRD Conversion in accordance with the procedures for approval set forth in Subsection 9.3 below. A special permit shall be issued only if the Board shall find that the plans submitted to it for the PRD Conversion conform substantially to the terms of the approval granted by the Town Meeting and provided further that such permit shall be issued in conformance with the provisions of Subsection 9.3.4. The Board may, in its discretion, permit minor deviations from the Application as approved by the Town Meeting, so long as it finds that such deviations are not substantially inconsistent with the Town Meeting approval.

SECTION 9 PLANNED RESIDENTIAL DEVELOPMENT (PRD)

9.1 Purpose - Planned Residential Development allows by special permit from the Planning Board an alternative pattern of land development to the pattern permitted in the residential districts. It is intended to encourage the conservation of more significant open space, while at the same time providing for a greater mixture of housing types in the Town at somewhat greater dwelling unit densities than is permitted in residential districts and Cluster Developments, without a significant increase in Town-wide population density. In a PRD, dwelling units should be constructed in appropriate clusters which are harmonious with neighborhood development and will not detract from the ecological and visual qualities of the environment. The overall site design and amenities should enhance the quality of living for the residents of the development, the immediate neighborhood and the Town generally. Attention, however, shall be given by the Planning Board as to whether the proposed site design, development layout, number, type and design of housing constitute a suitable development for the neighborhood within which it is to be located.

9.2 Standards

9.2.1 Minimum Tract Size - Planned Residential Development shall be permitted upon a single tract, in one ownership with definite boundaries ascertainable from a recorded deed or recorded plan, which has an area of not less than ten times the minimum lot area of the zoning district within which it is situated (Residence C - 250,000 square feet; Residence B - 300,000 square feet; Residence A - 400,000 square feet; Residence R - 600,000 square feet). Existing public or private ways need not constitute boundaries of the tract but the area within any such ways shall not be counted in determining minimum tract size.

9.2.2 Permissible Density - Subject to the limitations upon density contained in Subsection 9.2.3 below, the number of dwelling units permitted within any PRD shall be determined by the Planning Board to assure compliance with the Standards of Planned Residential Development Subsection 9.2.2.1 through 9.2.2.3 of this Subsection 9.2.2.

9.2.2.1 PRD Tract - The number of dwelling units obtained by dividing the area of the tract exclusive of land situated within the Flood Plain/Wetland District by the minimum standard lot size permitted in the zoning district(s) within which the tract is located; provided that no land shall be included which at the time of the submission of an application under this Section is subject to a perpetual restriction of the type described in G.L. c. 184 Sec. 31 or any restriction similar thereto.

9.2.2.2 Transferable Development Rights - The density of the PRD tract may be increased by conveying to the Town, or by restricting for the benefit of the town, land which is not within the PRD tract and which at the time of submission of an application under this Section was in private ownership and unencumbered by a perpetual restriction of the type described in G.L. c 184 Sec. 31 or any restriction similar thereto, provided that the Planning Board shall determine that such transfer or restriction is consonant with the purposes of this By-Law generally and this section 9 in particular. The number of transferable units is obtained by determining the area of land situated outside the Flood Plain/Wetland District and the area of land situated within the Flood Plain/Wetland District and by (1) dividing each such area of land situated in any one or more residential district(s) which the applicant proposes to convey or restrict by the minimum lot size permitted in the zoning district(s) within which such land is located and by (2) multiplying the number obtained therefrom by the appropriate following percentages:

- (a) 60% if such conveyance is of the entire fee interest in land none of which is situated within the Flood Plain/Wetland District; or
- (b) 10% if such conveyance is of the entire fee interest in the land and such land is situated within the Flood Plain/Wetland Districts; or
- (c) 30% if such conveyance is of a perpetual restriction of the type described in G.L. c. 184 Sec. 31 upon land none of which is situated within the Flood Plain/Wetland Districts; or
- (d) 5% if such conveyance is of a perpetual restriction of the type described in G.L. c. 184 Sec. 31 and such land is situated within the Flood Plain/Wetland Districts.

9.2.2.3 Low and Moderate Income Housing - The number of dwelling units obtained through application of either or both of Subsections 9.2.2.1 and 9.2.2.2 above may be increased by 15% if between 15% and 40% of the total number of units within the PRD are low or moderate income housing. Low and moderate income housing shall mean any housing subsidized by the Federal or State Government under any program of the type described in Chapter 774 including future amendments thereto and corresponding provisions of future laws.

9.2.3 Maximum Allowable Density - The total number of units which may be authorized by special permit from the Planning Board, without Town Meeting approval, in a standard PRD shall not exceed by 25% the number obtained by application of Subsection 9.2.2.1 above. A number of

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units in excess of these provisions but not greater than eight units per acre may be authorized by the Planning Board after approval by the Town Meeting of such PRD in accordance with Subsection 11.8. In no case shall that portion of any PRD which lies outside the Flood Plain/Wetland Districts contain less than 5,000 square feet of area for each dwelling unit.

9.2.4 Permitted Uses - There shall be permitted in PRD:

9.2.4.1 Single family detached and attached, and multi-unit structures of all types without regard to dwelling unit configuration or form of ownership; provided, however, that no more than 80% of the dwelling units within the PRD shall be in buildings of the same type.

9.2.4.2 Accessory uses incidental to the principal uses indicated above.

9.2.5 Lot Area, Frontage and Yard Requirements - there shall be no minimum lot area, frontage or yard requirements within a PRD. However, no building shall be erected within 50 feet of a public way or boundary line of the PRD.

9.2.6 Height - The maximum permitted height of any structure within a PRD shall be 35 feet.

9.2.7 Area of Residential Development - The area developed for a residential use, including buildings, parking and other areas paved for vehicular use, shall not exceed 30% of the total area of the PRD tract. Foot and bicycle paths and recreation facilities, including buildings wholly devoted to recreation, shall not be counted in calculating the 30% limitation.

9.2.8 Common Open Space

9.2.8.1 All land within the PRD tract which is not covered by buildings, roads, driveways, parking areas or service areas, or which is not set aside as private yards, patios or gardens for the residents, shall be Common Open Space. The area of the Common Open Space shall equal at least 40% of the total area of the PRD tract. Such land shall have a shape, dimension, character and location suitable to assure its use for park, recreation, conservation or agricultural purposes by at least all the residents of the PRD and no more than 50% of the minimum required Common Land shall be situated within the Flood Plain/Wetland District.

9.2.8.2 Provision shall be made so that the Common Open Space shall be owned in common by and readily accessible to the owners of all units in the PRD, or by a corporation, non-profit organization or trust whose members are all the owners and occupants of the units, or by the Town, or otherwise as the Planning Board may

direct. In all cases, a perpetual restriction of the type described in G.L. c. 184 Sec. 31 (including future amendments thereto and corresponding provisions of future laws) running to or enforceable by the Town shall be recorded in respect to such land. Such restriction shall provide that the Common Open Space shall be retained in perpetuity for one or more of the following uses: conservation, agriculture, recreation or park. Such restriction shall be in such form and substance as the Planning Board shall prescribe and may contain such additional restrictions on development and use of the Common Open Space as the Planning Board may deem appropriate.

9.2.8.3 In order to ensure that the corporation, non-profit organization or trust will properly maintain the Common Open Space an instrument(s) shall be recorded at the Middlesex South District Registry of Deeds which shall as a minimum provide:

- (a) A legal description of the Common Open Space.
- (b) A statement of the purposes for which the Common Open Space is intended to be used and the restrictions on its use and alienation;
- (c) The type and name of the corporation, non-profit organization, or trust which will own, manage and maintain the Common Open Space.
- (d) The ownership or beneficial interest in the corporation, non-profit organization or trust of each owner of a dwelling in the cluster development and a provision that such ownership or beneficial interest shall be appurtenant to the dwelling to which it relates and may not be conveyed or encumbered separately there from;
- (e) Provisions for the number, term of office, and the manner of election to office, removal from office and the filling of vacancies in the office of directors and/or officers of the corporation or non-profit organization or trustees of the trust;
- (f) Procedures for the conduct of the affairs and business of the corporation, non-profit organization or trust including provision for the calling and holding of meetings of members and directors and/or officers of the corporation or non-profit organization or beneficiaries and trustees of the trust and provision for quorum and voting requirements for action to be taken. Each owner of a dwelling shall have voting rights proportional to his ownership or beneficial interest in the corporation, non-profit organization or trust;

- (g) Provision for the management, maintenance, operation, improvement and repair of the Common Open Space and facilities thereon, including provisions for obtaining and maintaining adequate insurance and levying and collecting from the dwelling owners common charges to pay for expenses associated with the Common Open Space, including real estate taxes. It shall be provided that common charges are to be allocated among the dwelling owners in proportion to their ownership or beneficial interests in the corporation, non-profit organization or trust, and that each dwelling owner's share of the common charge shall be a lien against his real estate in the PRD, which shall have priority over all other liens with the exception of municipal liens and first mortgages of record; and
- (h) The method by which such instrument or instruments may be amended.

- 9.2.9 Limitation of Subdivision - No lot shown on a plan for which a permit is granted under this Section may be further subdivided, and a notation to this effect shall be shown on the plan.
- 9.2.10 Special provisions for the Bedford Housing Authority - Except as provided in Subsection 9.2.6 above, the limitations contained in Subsection 9.2. shall not apply to a PRD which will be owned by the Bedford Housing Authority and for which it is the applicant, provided that the Planning Board shall find that the proposed design is generally consonant with the purposes of this By-law.

9.3 Procedure for Approval

- 9.3.1 Application - Any person who desires a special permit for a PRD shall submit an application in writing in such form as the Planning Board may require which shall include the following:
 - 9.3.1.1 A Development Statement shall consist of a petition, a list of the parties in interest with respect to the PRD tract and any parcel proposed to be used pursuant to Subsection 9.2.2.2, a list of the development team and a written statement meeting the requirements of a site evaluation statement under the Subdivision Rules and Regulations of the Planning Board, and setting forth the development concept including in tabular form the number of units, type, size (number of bedrooms, floor area), ground coverage and summary showing the Area of Residential Development and Common Open Space as percentages of the total area of the PRD tract and a development schedule for all site improvements.

9.3.1.2 Copies of and proposed instruments to be recorded with the plans including the Common Open Space perpetual restriction, the deed and the membership corporation, non-profit organization or trust.

9.3.1.3 Development plans bearing the seal of a Massachusetts Registered Architect; Registered Civil Engineer or similar professional as appropriate and consisting of:

- (a) Site plans and specifications showing all site improvements and meeting, to the extent applicable, the requirements set forth for a Definitive Plan in the Subdivision Rules and Regulations of the Planning Board;
- (b) Site perspective, sections, elevations 1/8 inch = 1 foot and typical floor plan(s) 1/4 inch = 1 foot;
- (c) Detailed plans for disposal of sanitary sewage and surface drainage; and
- (d) Detailed plans for landscaping.

9.3.1.4 Such additional information as the Board may determine.

9.3.2 The Planning Board shall, within ten days of receipt of an application under Section 9 refer the application to the Conservation Commission, Board of Public Works, Board of Health Inspector and Inspector of Buildings for written reports and recommendations and no decisions shall be made until such reports are returned or 35 days have elapsed following such referral without receipt of such reports.

9.3.3. Planning Board - A special permit may be issued under this section only if the Planning Board finds that the PRD is in harmony with the general purpose and intent of this Section and that the PRD contains a mix of residential, open space, or other uses in a variety of buildings to be sufficiently advantageous to the Town to render it appropriate to depart from the requirements of this By-law otherwise applicable to the residential district(s) in which the PRD tract is located. If a special permit is granted, the Planning Board may impose as a condition thereof that the installation of municipal services and construction of interior drives within the PRD shall comply with the requirements of the Subdivision Rules and Regulations of the Planning Board, may require sufficient security to ensure such compliance and the completion of planned recreational facilities and site amenities, and may impose such additional safeguards as public safety, welfare and convenience may require.

Southborough Zoning Bylaw

Article 36: To see if the Town will vote to amend the Southborough Zoning By-Law as follows, or act in relation thereto.

1. Amend Section II Definitions by inserting the following at its appropriate alphabetic location:

Major Residential Development: The creation of more than ten lots (unless restricted from residential use) or construction of more than ten dwelling units within a two year period from or on a property or set of contiguous properties in common ownership as of January 1, 1986.

2. Amend Section IV Use Regulations, item 3. Abbreviations or Symbols Used, by deleting the "SP" item and inserting the following two items in its place:

"SP" - permitted only upon issuance of a Special Permit by the Board of Appeals, as provided in Section VIII;

"PB" - permitted only upon issuance of a Special Permit by the Planning Board;"

3. Amend Section IV.4 Schedule of Use Regulations by inserting the following row heading under (a) Residence, Farm, Institutional and Open Space:

18. Major Residential Development (see definition and Section V.7 Major Residential Development),

with an "N" entry in the IP column, and with "PB" entries in all other columns.

4. Amend Section V Special Regulations by inserting a new Section 7, to read as follows:

7. MAJOR RESIDENTIAL DEVELOPMENT

(a) APPLICABILITY. Major Residential Development, that is, the creation of more than ten lots (unless restricted from residential use) or construction of more than ten dwelling units within a two year period from or on a property or set of contiguous properties in common ownership as of January 1, 1986, is allowed only on Special Permit, as indicated in Section IV.4 Schedule of Use Regulations. Such special permits shall be acted upon in accordance with the following:

(b) PROCEDURES. Application for a special permit for Major Residential Development shall include a basic development plan and a substantially different alternative development plan, each either conforming to the requirements for a preliminary sub-division plan or not requiring approval under the Subdivision Control Law. "Substantial difference" would be a conventional plan versus a Flexible Development, or two plans of the same type having major differences in the number of lots created, road pattern, or open space configuration.

Applicants for Major Residential Development shall file with the Planning Board four copies of the following, to have been prepared by an interdisciplinary team including a Registered Land Surveyor, a Professional Engineer, and a registered Architect or Landscape Architect.

Southborough Zoning Bylaw continued

(1) The basic and alternative development plans described above, conforming to the information requirements for a preliminary subdivision plan under the Subdivision Regulations of the Planning Board. Such plans shall also indicate proposed topography and the results of deep soil test pits and percolation tests at the rate of one per every five acres, but in no case fewer than five per Major Residential Development.

(2) An Environmental Analysis, if required by the Southborough Subdivision Regulations.

(3) Any additional information necessary to make the determinations and assessments cited in Paragraphs (d) and (e) below.

(c) FLEXIBLE DEVELOPMENT. The Planning Board may authorize Flexible development within a Major Residential Development, with reduced requirements for the area and frontage of individual lots not having frontage on an existing public way, provided that the following are complied with.

(1) The number of lots shall not exceed the number of lots which could reasonably be expected to be developed under a conventional plan in full conformance with zoning, subdivision regulations, and health codes.

(2) Every lot shall contain lot area of not less than 2/3 of that required under Section VI.2 Schedule of Dimensional Regulations, and have lot frontage of not less than eighty feet.

(3) Any proposed open land, unless conveyed to the Town of Southborough, shall be covered by a recorded restriction enforceable by the Town of Southborough providing that such land shall be kept in an open state.

(d) BONUSED DEVELOPMENT. The Planning Board may authorize an increase in lots or dwelling units up to 25% above that allowed under paragraph V.7(c)(i). The Planning Board shall base its decision in granting or denying bonuses on the following, unless it explains in its decision why unusual circumstances cause them to act otherwise. The Planning Board shall maintain such data as is necessary for making these determinations, and applicants shall submit calculations supporting their requests.

(1) For land otherwise eligible to be credited towards lot area but not so credited and either restricted under a Conservation Restriction or deeded to the Town, if that land is determined by the Planning Board to be of critical importance for retention in an undeveloped state such as the following:

- land within 200 feet of existing major roads,

- land across which there are important scenic views from publicly accessible points,

- land of special habitat or ecological value and fragility: a number of bonus lots or units equal to the area restricted divided by the lot area requirement of Section VI.2 Schedule of Dimensional Regulations. In making this determination the

Southborough Zoning Bylaw continued

Planning Board shall seek the advice of the Conservation Commission.

(2) For each dwelling unit assured for at least ten years through covenant, repurchase agreement, or other means to be sold or leased at costs meeting the guidelines of State or Federal housing assistance programs, such as the MHFA First Time Homebuyer Loans: one added lot or dwelling unit for each dwelling unit so assured. In making this determination the Planning Board shall seek the advice of the Housing Authority.

(3) For land in Southborough not contiguous with the parcel to be developed, whether in the same ownership or not, if made part of the Flexible Development application and to be preserved under a Conservation Restriction or deeded to the Town, if the Planning Board determines that the land is of critical importance for retention, as provided under (1) above; and that the land being developed is not of critical importance for retention: one added dwelling unit for each dwelling unit which could reasonably be expected to have been developed on the restricted parcel under a conventional plan in full conformance with zoning, subdivision regulations, and health codes.

(e) DECISION. The Planning Board shall approve or approve with conditions a Special Permit for Major Residential Development for the basic development plan, provided that the Board determines that the basic plan is at least as beneficial to the town as the alternative, based upon the considerations established under Section V.1 Special Permit Requirements, and Section IV of the Southborough Subdivision Regulations, and that the alternative plan is in fact a good-faith design for beneficial use of the site.

If the board determines that the alternative plan is more beneficial to the Town than the basic plan, it shall approve Major Residential Development for that plan, provided that it meets all requirements of the Zoning By-Law.

The Board shall disapprove both plans only if it determines that the alternative plan is not a good-faith design, or that the more beneficial plan does not conform to the requirements of the Zoning By-Law.

(f) DEVELOPMENT TIMING As a condition of its approval, the Planning Board may require a development schedule limiting the rate of development for the premises, taking into consideration the intent of avoiding large year-to-year variations in Town-wide development rate while allowing development consistent with historic average rates, and also taking into consideration the housing needs which the development will serve, the housing cost and feasibility consequences of the limitation, and the ability of the Town to timefully provide needed services to the site. In no event shall a development be limited to fewer than ten lots or dwelling units per year, or be obliged to spread development out over more than eight years." (Proposed by the Master Plan Committee and the Board of Selectmen)

THE ADVISORY COMMITTEE WILL MAKE A RECOMMENDATION AT TOWN MEETING.

